IN THE INCOME TAX APPELLATE TRIBUNAL
"A"BENCH: BANGALORE

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1194/Bang/2025
AssessmentYear:2020-21

M/s. ETA Star Infopark No.501 & 502, V Floor North Block, Front Wing Manipal Centre, 120 Dickenson Road Bengaluru 560 042 **PAN No.AACFE6010C**	**Vs.**	PCIT-1 Bengaluru
APPELLANT		**RESPONDENT**

Appellant by	:	Sri S. Annamalai, Advocate, A.R.
Respondent by	:	Sri Somnath S. Ukkali, CIT-DR

Date of Hearing	:	08.07.2026
Date of Pronouncement	:	06.10.2026

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the ld. PCIT, Bengaluru - 1dated 24.03.2025vide DIN& Order No. ITBA/REV/F/REV5/2024-25/1074910550(1) passed u/s 263 of the Income Tax Act, 1961 (in short "the Act") for the Assessment Year 2020-21.

2. The assessee has raised the following grounds of appeal: -

General Ground:

1. The order of the learned Pr. Commissioner of Income-tax, Bangalore passed under section 263 of the Income Tax Act, 1961 (hereinafter referred to as "Act") dated 24-03-2025 for Assessment Year 2020-21 in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant's case.

Grounds on invoking the provisions of section 263 of the Act are without jurisdiction:

2. The learned Pr. Commissioner of Income Tax failed to appreciate that the appellant's case was selected for complete scrutiny and the Assessing Officer had duly examined the issues which are subject matter of Proceedings under section 263 of the Act, during the assessment proceedings and, after considering the relevant documents and explanations furnished by the appellant, accepted the computation of Long-term Capital gains and as such invoking the provisions of section 263 based on the Explanation-2 (a) to section 263 of the Act is not sustainable in law on the facts and circumstances of the case.

3. The learned Pr. Commissioner of Income-tax erred in holding that allowing of expenditure of brokerage by the learned Assessing Officer a sum of Rs.11,22,17,066/- paid to BHN Foods on sale of Land through journal entry and no bank payment details are available on record and consequently the assessment order passed is erroneous and prejudicial to the interest of the revenue and the same needs to be disallowed when the learned Pr. Commissioner of Income-tax accepted the same in para 14 of the order on furnishing of details by the appellant on the facts and circumstances of the case.

4. The learned Pr. Commissioner of Income-tax is not justified in exercising revisionary powers under section 263 of the Act as the entire proceeding is without jurisdiction and not in accordance with law on the facts and circumstances of the case.

5. The learned Pr. Commissioner of Income-tax has grossly erred in revising the assessment order passed by the learned Assessing officer without appreciating that there is no error, much less prejudicial to the interests of the Revenue to warrant a revision and therefore the order passed by the learned Pr. Commissioner of Income-tax is ultra vires to the scope of Section 263 and requires to be cancelled under the facts and circumstances of the Appellant's case.

6. The learned Pr. Commissioner of Income-tax erred in holding that both the conditions under Section 263—namely, (a) the assessment order being erroneous and (b) prejudicial to the interests of the

Revenue—were satisfied on the ground that the Assessment Order is passed without making inquiries or verification on the facts and circumstances of the case.

The learned Pr. Commissioner of Income-tax ought to have appreciated that the issue relating to Long-term Capital gains, the view adopted by the Assessing Officer is one of the plausible views and consistently followed in previous assessment years on the facts of the case, and also keeping in view of the principles laid down by various judgements available before passing the assessment Order in favour of assessee and hence the assessment order is not erroneous on the facts and circumstances of the case.

The learned Pr. Commissioner of Income-tax failed to recognize that the view taken by the Assessing Officer was not only plausible but also supported by legal precedent, including a binding decision of the Hon'ble Tribunal, Bangalore Bench, in the appellant's own case for AYs 2015-16 and 2016-17 quashing the revision orders under section 263 passed by then learned Pr. Commissioner of Income-tax , wherein the Tribunal had held that revenue received from the JDA on contribution of the same impugned land is assessable as Capital Gains and not business income and therefore, invocation of section 263 merely on the basis of a different interpretation by the learned Pr. Commissioner of Income-tax is not sustainable in law on the facts and circumstances of the case.

9. The learned Pr. Commissioner of Income-tax erred in holding that the Assessing Officer passed the Order without examining the issues raised in the 263 proceedings, and in invoking section 263 merely based on a difference of opinion is not sustainable in law on the facts and circumstances of the case.

10. The learned Pr. Commissioner of Income-tax erred in holding the Assessing Officer has not examined the issue of treatment of sale consideration received on sale of the impugned Undivided Share of Land (UDS) directly to the Developer either as Business income or Income from other sources instead of capital gains thus, rendering the Assessment Order as erroneous and so far as it is prejudicial in the interest of the revenue on the facts and circumstances of the case.

Grounds on setting aside the assessment order to the Assessing Officer to carryout necessary verification and examination regarding treatment of income by the learned Assessing Officer is bad in law.

11. The learned Pr. Commissioner of Income-tax is not justified in law in setting aside the assessment order passed under Section 143(3) r.w.s 144B of the Act by holding it to be erroneous and prejudicial to the interest of the revenue and directed the Assessing Officer to carry out necessary verification and examination regarding treatment of income when the learned Assessing Officer before passing the assessment order made enquiries and verification on the issue of long term capital gains on the facts and circumstances of the case.

12. The learned Pr. Commissioner of Income-tax erred in directing the Assessing Officer to make fresh assessment which amounts to ordering for making fishing and roving enquires and consequently the impugned order passed under section 263 of the Act is bad in law and is liable to be cancelled on the facts and circumstances of the case.

Order passed under section 263 of the Act is bad in law:

13. The learned Pr. Commissioner of Income-tax erred in law and on facts in not arriving at a firm or conclusive finding as to the correct head of income under which the amount received by the appellant on direct sale of undivided share of land to the developer under the registered Agreement of Sale dated 27-05-2019 is taxable, thereby rendering the

revisionary order under Section 263 vague, speculative and lacking finality on the facts and circumstances of the case.

14. The learned Pr. Commissioner of Income-tax acted beyond jurisdiction in issuing directions to the Assessing Officer without himself determining whether the impugned income is taxable under the head Business Income/ Income from other sources or under the head Capital gains, and thereby failed to demonstrate how the original assessment order was erroneous or prejudicial to the interests of the revenue on the facts and circumstances of the case.

15. The learned Pr. Commissioner of Income-tax has erred in law and on facts in invoking the provisions of Section 263 of the Act with the primary intention of bringing the impugned income to tax at the normal rate of 30% applicable to Business income or Income from other sources, in place of the special rate of 20% applicable to long-term capital gains, which does not constitute a valid ground for treating the assessment order as erroneous and prejudicial to the interests of the revenue on the facts and circumstances of the case.

16. The learned Pr. Commissioner of Income-tax has erred in forming an inconclusive opinion that the income received by the appellant from sale of undivided share of land directly to the Developer under the Agreement dated 27-05-2019 is taxable under the head "Income from other sources" or "Income from Business" instead of "Capital Gains" on the facts and circumstances of the case.

17. The decisions relied upon by the learned Pr. Commissioner of Income-tax are distinguishable on the facts and circumstances of the case of the appellant.

18. The learned Pr. Commissioner of Income-tax has committed error in setting aside the assessment order dated 29-09-2022 and directing the learned Assessing Officer to pass fresh order after carrying out

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the necessary verification and examination regarding treatment of income arising in view of registered " Agreement of Sale without Possession" executed on 27-05-2019 by the appellant in favour of the Developer for sale of undivided share of Land where as the learned Assessing Officer had conducted proper and adequate enquiry during the scrutiny proceedings and arrived at a correct conclusions that the said income is taxable under head "Long-term Capital Gains" and hence, the direction to make fresh assessment amounts to ordering for making fishing and roving enquires without any material in support thereof and consequently the impugned order passed is bad in law is liable to be cancelled on the facts and circumstances of the case.

Grounds on merits of the matter that the income offered by the appellant under the head long term capital gain is correct:

19. The learned Pr. Commissioner of Income-tax is not justified in law in not accepting the income offered under the head Capital gains a sum of Rs. 460,69,43,333/- on the facts and circumstances of the case.

20. The learned Pr. Commissioner of Income-tax is not justified in law in making erroneous observations that the learned Assessing Officer has not conducted detailed inquiry and proper verification and hence the brokerage paid by the appellant on sale of properties a sum of Rs.11,22,17,066/- to M/s. BHN Foods is disallowable, in the order passed under section 263 of the Act on the facts and circumstances of the case.

21. The learned Pr. Commissioner of Income-tax erred in law in holding that the registered Agreement of Sale Without Possession dated 27-05-2019 did not constitute a valid "transfer" under section 2(47) of the Act for the purpose of capital gains and hence it is taxable under head

Income from other sources, on the facts and circumstances of the case.

22. The learned Pr. Commissioner of Income-tax failed to consider all the clauses of Agreement of sale without possession dated 27.05.2019 and submissions filed by the appellant how it constitute transfer to attract capital gains on the impugned sale transaction on the facts and circumstances of the case.

23. The learned Pr. Commissioner of Income-tax erred in considering that the impugned income is arising on sale of stock in trade when the appellant has accounted the said land in its books of accounts as capital asset and shown as fixed asset/capital work in progress from the beginning on the facts and circumstances of the case.

24. The learned Pr. Commissioner of Income-tax was not justified in law in forming an opinion and arriving at a conclusion that the income received by the appellant from sale of undivided share of Land directly to the Developer vide registered "Agreement of Sale without Possession" dated 27-05-2019 would be taxable under the head "Income from Business" instead under the head Income from Capital Gains on holding that the initial Joint Development Agreement dated 28-03-2011 entered into by the appellant in favour of the said Developer for contributing its Land measuring 42 acres situate at Binnypet, Bengaluru for development of "Parkwest" residential project is "adventure in nature of trade" and hence the said Land is stock-in-trade and income derived therefrom is taxable as Business income.

25. The learned Pr. Commissioner of Income-tax failed to consider the decision of this Hon'ble Tribunal in the appellant's own case for the same land which part of the Joint Development Agreement held that it is a capital asset and the income from the same is to be taxed under the head capital gains and not as Income from Business on the facts and circumstances of the case.

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5. The learned Pr. Commissioner of Income-tax failed to appreciate that the appellant rightly offered the income under the head "Long Term Capital Gains" in the return of income filed and paid appropriate taxes and the Assessing Officer, after due scrutiny and examination of the facts and documents accepted the return and therefore, the conditions for invoking Section 263 of the Act are not fulfilled and the revision order is liable to be quashed on the facts and circumstances of the case.

Grounds on Order passed u/s 263 of the Act is in Violation of the Principles of Natural Justice:

27. The learned Pr. Commissioner of Income-tax failed to consider the entire objections dated 12-02-2025 filed in response the notice issued under Section 263 of the Act and the decisions of the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court relied by the appellant in its submissions and consequently the order passed is in violation of the principles of natural justice and required to be set-aside on the facts and circumstances of the case.

28. The grounds mentioned by the learned Pr. Commissioner of Income-tax in the notice dated 23-01-2025 and the revision order dated 24-03-2025 for treating the assessment order dated 29-09-2022 is erroneous, are quite different. As such, the appellant was not given adequate opportunity to present its case precisely against the grounds stated in the revision order by the learned Pr. Commissioner of Income-tax and hence the same is against principles of natural justice.

29. The learned Pr. Commissioner of Income Tax erred in invoking clause (a) to Explanation - 2 to Section 263 of the Act while passing order under Section 263 of the Act and the said limb of explanation - 2 to

Section 263 is not attracted to the facts of the case since the learned Assessing officer, during the course of assessment proceedings, conducted detailed enquiries before passing the assessment order u/s. 143(3) r.w.s 144B of the Act and consequently the order passed u/s 263 of the Act is in violation of the principles of natural justice and required to be quashed on the facts and circumstances of the case.

30. The order passed under section 263 of the Act by the learned Pr. Commissioner of Income-tax is beyond the scope of issues raised in the notice issued under section 263 of the Act and consequently the order passed is bad in law and required to be quashed on the facts and circumstances of the case.

31. The learned Pr. Commissioner of Income-tax failed to adhere to the principles of natural justice by not providing the appellant a reasonable opportunity to respond to the proposed variation that the income should be taxed as "Business Income", particularly when the notice issued under Section 263 dated 23-01-2025 proposed to treat the income only as "Income from Other Sources" on the facts and circumstances of the case.

32. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

33. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

For ETA STAR INFOPARK

MANAGING PARTNER

Place: Chennai
Date:23/05/2025

APPELLANT

3. The assessee has raised the following revised grounds of appeal:

Grounds on invoking the provisions of section 263 of the Act are without jurisdiction:

1. The learned Pr. Commissioner of Income-tax failed to appreciate that the appellant's case was selected for complete scrutiny and the Assessing Officer had duly examined the issues which are subject matter of Proceedings under section 263 of the Act and consequently invoking the provisions of section 263 based on the Explanation-2 (a) to section 263 of the Act is not sustainable in law on the facts and circumstances of the case.

2. The learned Pr. Commissioner of Income-tax erred in holding that the assessment order passed is erroneous and prejudicial to the interest of the revenue by considering the issue on expenditure of sales commission allowed by the learned Assessing Officer on the facts and circumstances of the case.

3. The learned Pr. Commissioner of Income-tax ought to have appreciated that the issue relating to Long-term Capital gains, the view adopted by the Assessing Officer is one of the plausible views and hence the assessment order is not erroneous on the facts and circumstances of the case.

4. The learned Pr. Commissioner of Income-tax erred in holding that the Assessing Officer passed the Order without examining the issues raised in the 263 proceedings, and in invoking section 263 merely based on a difference of opinion is not sustainable in law on the facts and circumstances of the case.

5. The learned Pr. Commissioner of Income-tax erred in holding the Assessing Officer has not examined the issue of treatment of sale consideration received either as Business income or Income from other sources instead of capital gains thus, rendering the Assessment Order as erroneous and so far as it is prejudicial in the interest of the revenue on the facts and circumstances of the case.

6. The learned Pr. Commissioner of Income-tax is not justified in law in setting aside the assessment order passed under Section 143(3) r.w.s 144B of the Act to carry out necessary verification and examination regarding treatment of income when the learned Assessing Officer before passing the assessment order made enquiries and verification on the facts and circumstances of the case.

7. The learned Pr. Commissioner of Income-tax erred in directing the Assessing Officer to make fresh assessment which amounts to ordering for making fishing and roving enquires and consequently the impugned order passed under section 263 of the Act is bad in law and is liable to be cancelled on the facts and circumstances of the case.

8. The learned Pr. Commissioner of Income-tax has grossly erred in setting aside the assessment order passed without appreciating the fact that there is no error, much less prejudicial to the interests of the Revenue under the facts and circumstances of the Appellant's case.

Order passed under section 263 of the Act is bad in law:

9. The learned Pr. Commissioner of Income-tax erred in law and on facts in not arriving at finding as to the correct head of income under which the amount received by the appellant on direct sale of undivided share of land to the developer under the registered Agreement of Sale dated 27-05-2019 is taxable under the head Business income/Income from other sources or under the head Capital gains.

10. The learned Pr. Commissioner of Income-tax acted beyond jurisdiction in issuing directions to the Assessing Officer without himself determining whether the impugned income is taxable under the head Business Income/ Income from other sources or under the head Capital gains on the facts and circumstances of the case.

11. The learned Pr. Commissioner of Income-tax has erred in law and on facts in invoking the provisions of Section 263 of the Act with the primary intention of bringing the impugned income to higher rate of tax, which does not constitute a valid ground for treating the assessment order as erroneous and prejudicial to the interests of the revenue on the facts and circumstances of the case.

Grounds on merits of the matter that the income offered by the appellant under the head long term capital gain is correct:

12. The learned Pr. Commissioner of Income-tax is not justified in law in not accepting the income offered under the head Capital gains a sum of Rs. 460,69,43,333/- on the facts and circumstances of the case.

13. The learned Pr. Commissioner of Income-tax is not justified in law in making erroneous observations that the learned Assessing Officer has not conducted detailed inquiry and proper verification and hence the sale commission of Rs.11,22,17,066/- paid by the appellant to M/s. BHN Foods is disallowable, in the order passed under section 263 of the Act on the facts and circumstances of the case.

14. The learned Pr. Commissioner of Income-tax erred in law in holding that the registered Agreement of Sale Without Possession dated 27-05-2019 did not constitute a valid "transfer" under section 2(47) of the Act for the purpose of capital gains and hence it is taxable under head Income from other sources, on the facts and circumstances of the case.

15. The learned Pr. Commissioner of Income-tax failed to consider all the clauses of Agreement of sale without possession dated 27.05.2019 and submissions filed by the appellant how it constitute transfer to attract capital gains on the impugned sale transaction on the facts and circumstances of the case.

16. The learned Pr. Commissioner of Income-tax erred in considering that the impugned income is arising on sale of stock in trade when the appellant has accounted the said land in its books of accounts as capital asset and shown as fixed asset/capital work in progress from the beginning on the facts and circumstances of the case.

17. The learned Pr. Commissioner of Income-tax was not justified in law in forming an opinion that the income would be taxable under the head "Income from Business" instead under the head Income from Capital Gains on the facts and circumstances of the case.

18. The learned Pr. Commissioner of Income-tax failed to consider the decision of this Hon'ble Tribunal in the appellant's own case for the A.Y. 2015-16 and 2016-17 in respect of the same land which formed

part of the Joint Development Agreement, held that it is a capital asset and the income received from the same is to be taxed under the head capital gains and not as Income from Business on the facts and circumstances of the case.

Grounds on Order passed u/s 263 of the Act is in Violation of the Principles of Natural Justice:

19. The order passed under section 263 of the Act by the learned Pr. Commissioner of Income-tax is beyond the scope of issues raised in the notice issued under section 263 of the Act and consequently the order passed is bad in law and required to be quashed on the facts and circumstances of the case.

20. The learned Pr. Commissioner of Income-tax failed to adhere to the principles of natural justice by not providing the appellant a reasonable opportunity to respond to the proposed variation that the income should be taxed as "Business Income", particularly when the notice issued under Section 263 dated 23-01-2025 proposed to treat the income only as "Income from Other Sources" on the facts and circumstances of the case.

21. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

22. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

4. The assessee has raised the following additional grounds of appeal:

1. The learned Pr. Commissioner of Income-tax is not justified in exercising revisionary powers under section 263 of the Act as the entire proceeding is without jurisdiction and not in accordance with law on the facts and circumstances of the case.

2. The learned Pr. Commissioner of Income-tax is not justified in law in invoking provisions of section 263 of the Act based on the audit objections raised by revenue audit party and the same is bad in law and consequently the entire proceeding under section 263 of the Act deserves to be quashed on the facts and circumstances of the case.

3. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

4. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

4.1 We have heard both the parties on admission of additional grounds. The Lucknow bench of the Hon'ble Allahabad High Court in the case of CIT Vs. Sahara India (2012) 347 ITR 331 held that a legal issue can be raised at any stage but there shall be good reason for admitting the additional ground. In our Opinion all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of the adjudication of above grounds. Further we are also of the opinion that the additional grounds raised in the present case are purely legal in nature & therefore these are critical for a fair adjudication of the matter. The Hon'ble Madras High Court in the case of CIT Vs Indian Bank (2015) 230 Taxman 635 (Madras) held that Rule 11 of the I.T. Rules makes it clear that the assessee has the right to

raise additional grounds and if the same is beneficial to the assessee, the same should be considered by the Tribunal.

4.2 Further, the Hon'ble Karnataka High Court in the case of Gundathur Thimmappa & Sons vs. CIT, Mysore, reported in (1968) 70 ITR 70 held that when the point raised by the assessee is a point which went to the root of the matter and affected not merely his liability to pay tax but also jurisdiction of the Tribunals and Authorities themselves to subject the amount concerned to tax, the Appellate Tribunal had the discretion to permit point of law to be raised for the first time in appeal because the question went to the root of the case. The Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs CIT (1998) 229 ITR 383 held that undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings, we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. Accordingly, we are inclined to admit the additional legal grounds for the purpose of adjudication as there was no investigation of any fresh facts otherwise on record and these are critical for a fair adjudication of the matter.

5. Further, the assessee has submitted the following additional evidences:

Sl. No.	Particulars	Page No.
1.	Affidavit for Additional Evidence	A-K
2.	**Annexure-1:** Copy of the RTI application dated 25.02.2021.	1-2
3.	**Annexure-2:** Copy of letter dated 25.02.2026 issued by ITO (TPS)-1 and Nodal Officer, RIT-MIS of the Office of the Commissioner of Income-tax (Admin & TPS), Bengaluru.	3
4.	**Annexure-3:** Copy of letter dated 12.03.2026 issued by CPIO and jurisdictional Assistant Commissioner of Income-tax, Circle – 1(1)(1), Bengaluru.	4-6
5.	**Annexure-4:** Copy of Binnypet Land Ledger Account recording the receipt of Land Contribution of 28.9075 acres on 2-7-2008 and 13.0925 acres on 1-6-2010 from Partner, ETA Karnataka Estates Ltd. on Capital Account in the books of the appellant.	7
6.	**Annexure-5:** Copy of Year-wise break up of Binnypet Land Cost at Rs.4,34,61,326/- and Capital WIP including break up nature of other expenses of Rs.1,22,71,398/- debited to Capital WIP, as appearing in the Balance-sheets for FYs 2008-2009 to 2011-2012.	8-9
7.	**Annexure-6:** Copy of Audited Financial Statements for FY 2008-2009 reflecting the Binnypet Land and other expenses shown under Schedule - Capital WIP in the Balance-sheet as at 31st March, 2009.	10-14
8.	**Annexure-7:** Copy of Audited Financial Statements for FY 2009-2010 reflecting Binnypet Land and other expenses shown under Schedule - Fixed Assets in the Balance-sheet as at 31st March, 2010.	15-18
9.	**Annexure-8:** Copy of Audited Financial Statements for FY 2010-2011 reflecting Binnypet Land and other expenses shown under Schedule -	19-23

	Fixed Assets in the Balance-sheet as at 31st March,2011.	
10.	**Annexure-9:** Copy of Audited Financial Statements for FY 2011-2012 reflecting Binnypet Land and other expenses shown under Schedule – Capital WIP in the Balance-sheet as at 31st March, 2012.	24-27
11.	**Annexure-10:** Copy of Audited Financial Statements for FY 2012-2013 reflecting Binnypet Land and other expenses shown under Schedule - Capital WIP in the Balance-sheet as at 31st March, 2013.	28-31
12.	**Annexure-11:** Copy of Audited Financial Statements for FY 2013-2014 reflecting Binnypet Land and other expenses shown under Schedule - Capital WIP as at 31st March, 2014.	32-37
13.	**Annexure-12:** Copy of Fresh Assessment Order under section 143(3) read with section 263 read with section 144B of the I.T.Act,1961 dated 25-03-2026 passed by the Assessment Unit of NeAFC, Delhi for AY 2020-21 in the case of the appellant, pursuant to directions given by the learned Pr.CIT-1, Bengaluru in the impugned Revision Order under section 263 of the Act dated 24-03-2025 (said order is challenged by the appellant in this appeal).	38-55

5.1 According to Rule 29 of the I.T. Rules, 1963 generally the parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal but if the Tribunal requires any document to be produced to enable it to pass orders or for any other substantial cause, or, if the income tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them or not specified by them, the Tribunal for reasons

to be recorded, may allow such document to be produced or may allow such evidence to be adduced. In the present case, the RTI application was filed only on 25/02/2026. Further, the copy of the CPIO letter as well as the copy of the consequential assessment order was obviously not available before the lower authorities. Before us, the ld. A.R. of the assessee vehemently submitted that these additional evidences are crucial for deciding the issue and are produced in support of valid claims made by the assessee in its written submission filed on 24/02/2026 in respect of its revised grounds of appeal/additional grounds of appeal. Further, the ld. AR submitted that failure to produce these records at the time of revision proceedings was due to reasonable cause and the same was not intentional. This being so, we find good and sufficient reason in not submitting the additional evidence before the lower authorities. Accordingly, we admit these additional evidences as in our opinion these are essential for adjudication of the issue in the present appeal.

6. Now the brief facts of the case are that the assessee is a partnership firm constituted under Deed of Partnership dated 02.07.2008 and engaged in business of real estate development and comprises following domestic companies as its partners: -

- ETA Karnataka Estates Ltd.
- ETA Star Property Developers Ltd.
- ETA Constructions (India) Ltd.
- ETA Properties and Investments Pvt. Ltd.
- ETA Builders Pvt. Ltd.
- Maricar Estates Pvt. Ltd.
- ETA Estates Pvt. Ltd.

The assessee firm had entered into a Joint Development Agreement dated 28.03.2011 along with ETA Karnataka Estates Ltd. (who is

one of the partners in assessee firm), ETA Constructions India Ltd. (who is one of the partners in assessee firm and also co-developer) with M/s Relationships Properties Pvt. Ltd. (Developer) for developing the residential project named as 'Park West' at Binnypet, Bangalore. However, the sale proceeds received on sale of land were declared under the head of capital gains and not reported as business income which led to taxation being levied at the rate of 20% instead of 30%.

6.1 The ld. PCIT, Bengaluru -1 on examination of assessment records noticed that the assessee had entered into a Joint Development Agreement with M/s Relationships Properties Pvt. Ltd. (RPPL) for development of a residential township on the land measuring 42 acres owned by the assessee farm at Binnypet, Bangalore and 05 acres owned by M/s ETA Karnataka Estates Ltd. In terms of the said JDA Dated 28.03.2011, RPPL had paid a sum of Rs.180 crores as refundable deposit to be repaid in 8 yearly installments during the development of above property. It was noticed from the JDA dated 28.03.2011 that the assessee along with co-owners had given the developmental rights to M/s RPPL in consideration of 31% of net revenue share to be received by M/s RPPL on sale of properties being developed. The realization mechanism had been discussed in detail in para 3.2 of the JDA dated 28.03.2011. It was further noticed from perusal of return of income filed for A.Y.2011-12 (the relevant A.Y. to the previous year when JDA was executed), that assessee firm had not disclosed any income on signing of JDA dated 28.03.2011 under head of capital gains. It is evident that assessee had not treated the handing over land to M/s RPPL as deemed transfer within the meaning of section 2(47)(v) of the Act. It was noticed that in assessee's own financial statement of previous years that income from sale of said asset was declared as direct income/operational income and the land to be transferred as a trading property but tax has been paid u/s 112 of

the Act at the rate of 20% which should have been paid at the rate of 30% as the whole activity undertaken by the assessee-firm in the form of signing of JDA with M/s RPPL to receive sale proceeds on year to year basis is nothing but an adventure in the nature of trade. In the opinion of ld. PCIT, the similar view had been enunciated by the Hon'ble Supreme Court in the case of Raja J Rameshwar Rao v. CIT (42 ITR 179) (SC), where it has been held that when land is developed and sold with the sole aim of fetching a good market value the it is in the nature of business, further, the Hon'ble Karnataka High Court has also given a similar finding in the case of CIT v. Ramaiah and others reported in 146 ITR 39 and CIT v. P Kannan reported in 154 ITR 441 further the assessee has also claimed certain business expenditure in the return of income which shows the intention of the assessee was to conduct business by entering into the development agreement dated 28.03.2011.

6.2 In the opinion of the ld. PCIT, the AO had failed to examine the issue in the right perspective by allowing the impugned transaction under the head LTCG which should have been taxed under the head of other sources or business as the activity carried on by the assessee is an adventure in the nature of trade which is also supported by the decision of the Hon'ble Supreme Court and Hon'ble High Court of Karnataka. However, the AO in assessment order had allowed the receipts as sale consideration for sale of capital assets instead of treating it as business income which makes the impugned assessment order dated 29.09.2022 to be erroneous in so far as prejudicial to the interest of the revenue and the omission to do so has resulted in short levy of tax amounting to Rs.71,38,64,721/-.

6.3 Further, on examination of assessment records, the ld. PCIT, Bengaluru-1 noticed that the assessee had deducted an amount of Rs.14,80,17,044/- which includes an amount of Rs.11,22,17,066/-

paid to BHN Foods towards brokerage on sale of properties through an agreement of sale dated 27.05.2019. However, it is pertinent to note that the assessee had already entered into the JDA with the purchaser Relationship Properties Pvt. Ltd. since **28.03.2011** and there is no necessity of appointing so called 'consultant' for negotiating the deal. Further, on verification of the assessment records the ld. PCIT noticed that neither the AO had enquired nor the assessee had submitted any agreement entered into with the consultant and the terms and conditions thereof. No details in respect of BHN Foods was available on assessment record and as the name suggests, BHN Foods appeared to be in food business and not in real estate.

6.4 Further, it is also observed by the ld. PCIT that accounting of the impugned expenditure is through journal entries and no bank payment details were available in the assessment record. Accordingly, it was held that allowing the brokerage paid as expenditure without verification of same is erroneous and prejudicial to the interest of the revenue and the same needs to be disallowed. The omission to do so has resulted in short levy of tax amounting to Rs.3,92,13,164/- in view of the above facts the impugned assessment order dated 29.09.2022 was deemed to be erroneous in so far as it is prejudicial to the interest of the revenue in view of the **clause (a)** to **explanation 2** of section 263 of the Act.

6.5 After examination of the submissions filed by the assessee, the ld. PCIT partly accepted the contention of the assessee with regard to brokerage charges paid by the assessee to M/s BHN Foods amounting to Rs.11,22,17,066/-. However, the ld. PCIT noticed that the aspect of the impugned transfer of land in question vide agreement of sale without possession dated 27.05.2019, to be treated as income from other sources or business activity carried on by the assessee as the same being an adventure in the nature of

trade **had not been verified** during the assessment proceeding. Thus, **in the opinion of ld. PCIT the primary issue involved is whether the sale of this undivided share of land arising out of JDA dated 28.03.2011 executed by the assessee firm is to be considered as sale proceeds under the head of capital gains or business income arising on entering adventure in the nature of trade which has not been examined by the AO**. After analyzing the gist history of the impugned land, the ld. PCIT, Bengaluru-1 was of the opinion that treatment of land in question as capital asset and instead of stock in trade is not acceptable for the following reasons: -

- Intention of assessee firm while entering into JDA dated 28.03.2011 was to exploit commercial use of land.
- In agreement the developer has obligated to ensure that the project yields to the assessee firm at least the minimum average net revenue in respect of commercial exploitation of the land owner's share over the lifetime of the project.
- It is necessary to appreciate that assessee firm had entered in to non-compete clause with the developer i.e., RPPL at clause no. 10.1 of the said agreement thereby committing that assessee firm along with other land owners and co-developers will not compete with developer during the term of agreement and completion of the sale of the entire development on the project land.
- It is also necessary to observe the treatment given to the impugned land by the assessee firm in its books of accounts. The assessee had not held the said lands for investment and instead the same were treated as stock in trade whose value kept on varying each year which is corroborated by the fact that in closing stock or stock in trade, the valuation is always as per the market price or the cost price whichever is lower.

- Further, after examination of agreement of sale, it is noticed that possession has not been transferred to the purchaser/developer. A contract for sale is merely an agreement to sell and there is no transfer of ownership. The sale only creates certain rights and interest for the parties over the property. Ownership refers to a bundle of right such as possession, title, interest, authority to dispose etc.
- In present facts of the case, the agreement of sale without possession is an agreement executed between parties, an owner of land and purchaser of land for sell of land without giving the possession to the buyer/purchaser. Land is remaining in possession of the seller.
- It is further noticed that it is not a case of transfer under section 2(47) of the Act as title to immovable assets will not pass till the conveyance deed is executed or registered.

6.6 Considering the facts of the case and the decisions of the Supreme Court, the ld. PCIT was of the opinion that the assessment order passed u/s 143(3) of the Act r.w.s 144B of the Act dated 29.09.2022 was erroneous and prejudicial to the interest of the revenue in so far as the AO has passed the order without examining the issues discussed above. Accordingly, the ld. PCIT set aside the assessment order with a direction to the AO to pass a fresh order after carrying out the necessary verification and examination regarding the treatment of income arising in view of 'agreement of sale without possession' executed on 27.05.2019 and while doing so the AO may ensure that adequate opportunity in terms principles of natural justice is granted to the assessee.

7. Aggrieved by the revision order passed by the ld. PCIT, Bengaluru-1 u/s 263 of the Act dated 24.03.2025, the assessee has filed the present appeal before this Tribunal.

8. Before us, the ld.AR of the assessee vehemently submitted that the order passed by ld. PCIT, Bengaluru-1 is illegal and bad in law as neither the order passed by the AO is erroneous nor prejudicial to the interest of revenue. Further, the ld.AR of the assessee in support of its contention also filed a written submission which are reproduced below: -

BEFORE THE HON'BLE INCOME-TAX APPELLATE TRIBUNAL,
BENGALURU 'A' BENCH, BANGALORE.

Name & Address of the Appellant	**M/s ETA Star Infopark** No. 501, 502, Front Wing, 5th Floor, North Block, Manipal Center, 120, Dickenson Road, Bengaluru 560042.
PAN	AACFE6010C
Assessment Year	**2020-21**
Order appealed against passed by	**Order under section 263 of the Income-tax Act, 1961 ("the Act") dated 24/03/2025 passed by learned Principal Commissioner of Income-tax, Bangalore-1, Bangalore.**
ITA No.	**1194/BANG/2025**

Appellant's submissions to - (1) Crux of the main contentions of the Revenue (2) First Counter and (3) Second Counter of the Revenue Submissions, both dated 8-07-2026

The appellant, in continuation to its Written Submissions-1 dated 23-02-2026 (hereinafter referred to as **"AWS-1" dated 23-02-2026**) in support of the revised Grounds of Appeal; its Additional Written Submissions-2 dated 25-06-2026 (hereinafter referred to as **"AWS-2 dated 25-06-026"**) and Appellant's Response dated **7-07-2026** in response to Revenue's Written Submissions dated 25-06-2026 (hereinafter referred to **"AWS-3 dated 7-07-2026"**), is furnishing its submissions below in three parts for kind consideration of the Honourable Tribunal:-

Part-I : Appellant's submissions to the crux of the main contentions of the Revenue justifying the exercise of revisionary powers under section 263 of the Act by the learned Pr.CIT in the Revision Order dated 24-03-2025.

Part-II : Appellant's submissions to the First Counter dated 8-07-2026 given by the learned DR at the hearing held on 8-07-2026 in response to appellant's AWS-2 dated 25-06-2026.

Part-III : Appellant's submissions to the Second Counter dated 8-07-2026 given by the learned DR at the hearing held on 8-07-2026 in response to appellant's AWS-3 dated 7-07-2026.

Part-I : Appellant's submissions to the crux of the main contentions of the Revenue justifying the exercise of revisionary powers under section 263 of the Act by the learned Pr.CIT in the Revision Order dated 24-03-2025 and that the AO has failed to identify and ascertain the taxability of sale consideration under correct of head of income and therefore, due to lack of inquiry on this aspect, the assessment order is erroneous.

1.1 Main observations given by the learned Pr.CIT in the Revision Order.

At the outset, the appellant wish to refer to the following observations made by the learned in the Revision Order dated 24-03-2025 (Page No. 29-41 of Appeal Memo) :-

Para-18

" xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
In the present case also, no enquiry was made by the AO on this aspect that whether the income in question is assessable under the head 'Business income/ Income from Other Sources or under the head Capital gains' and therefore the judgment of the Honourable Apex Courtis squarely applicable." (Malabar Industrial Company Ltd vs CIT).

Para-19

"19. On examination of assessment records and as discussed above, it is noticed that the Assessing Officer had not examined the issue of treatment of sale consideration of impugned land as Business income/ Income from Other sources or Capital gains and thus, rendering the impugned assessment order dated 29-09-2022 as erroneous in so far as it is prejudicial to the interest of the Revenue for the below reason:-
(a) the Order is passed without making inquiries or verification which should have been made."

Last Para

"Conclusion & Decision:

Considering the facts of the case and the decision of the Supreme Court mentioned above, I am of the opinion that assessment order passed u/s 143(3) r.w.s.144B of the Act dated 29-09-2022 is erroneous and prejudicial to the interest of the Revenue in so far as the AO has passed the order without examining the issues discussed. ***Accordingly, the assessment order is set aside with direction to the Assessing Officer to pass fresh order after carrying out the necessary verification and examination regarding treatment of income arising in view of "Agreement of Sale without Possession" executed on 27-05-2019,*** *while doing so, the Assessing Officer may ensure that adequate opportunity in terms of principles of natural justice is granted to the assessee. The proceedings u/s 263 is disposed off with above directions to the Assessing Officer."*

1.2 Observations of the learned Pr.CIT on taxability of sale consideration as Business Income

To justify the sale consideration is taxable as Business income, **the learned Pr.CIT in paras-2 to 7, 15,16,17) of the Revision Order is referring to the facts and terms relating to the JDA dated 28-03-2011 and not from the Agreement of Sale dated 27-5-2019,** to prove that Binnypet Land held by the appellant is not a capital asset but stock-in-trade. It is pertinent to note here that the paras -2 to 7 are similar to those contained in the previous Revision Orders dated 18-03-2020 for AY 2015-16 and dated 30-03-2021 for AY 2016-17. Based on his observations on the facts and covenants contained in the said JDA (as adventure in the nature of trade) and some expenses incurred by the appellant in the initial years, towards professional consultancy charges (for an abandoned initial proposal and for advisor services obtained while entering into JDA), property tax and other levies, security charges and misc. expenses, which were capitalized and shown as "Other expenses" under heading Capital WIP, the learned Pr.CIT is of the opinion that the sale consideration is taxable as business income. According to him. the learned AO has not looked into these aspects.

1.3 Observations of learned Pr.CIT on taxability of sale consideration as Income from Other Sources

Further, in the Notice issued u/s 263 dated 23-1-2025 and in the later part of para-17 of the Revision Order (at page no.36-38 of Appeal Memo), the learned Pr.CIT has made some comments about few clauses contained in the Agreement of Sale,

i.e. Agreement of sale is mere contract to sell, inadequacy of stamp duty paid, clause 13- no possession of the property has been transferred to the purchaser, the Agreement of sale is not a transfer u/s 2(47) of the Act as title to immovable assets will not pass till the conveyance deed is executed or registered; conditions of section 53A of T.P. Act are not satisfied to apply the sub-clause (v) of Section 2(47) of the Act, etc. to prove that the sale consideration may be taxable under head Income from Other Sources. According to him, the learned AO has also not considered these aspects.

1.4 Setting-aside of the assessment order for conducting fresh inquiries

Based on the above observations on characterization of income and the learned AO allegedly has not made any inquiries on the these aspects, the learned Pr.CIT is of the opinion that the assessment order is erroneous and accordingly he has set aside the assessment order and has directed the AO to pass fresh order after carrying out the necessary verification and examination **regarding treatment of income arising in view of Agreement of Sale dated 27-05-2019**.

1.5 Arguments and comments of the Learned DR

The learned DR in the course of hearings of appeal and in his written submissions dated 25-6-2026 and repeated in both Counters dated 8-7-2026, has reiterated the above observations contained in the Revision Order and justified the action of the learned Pr.CIT remanding the matter to learned AO to conduct further investigations/ fresh inquiries on the treatment of income – whether same is taxable as Income from Other Sources or Income from Business? In support of his arguments, the learned DR has pointed out that the assessment order is silent on this issue; silent order is not saved by complete scrutiny; asking for documents is not inquiry; no show cause notice on the Rs.460 Crores issue, Possible view needs a view and silent is not a view; earlier ITAT Order does not help; section 263(1) of the Act expressly authorises remand for fresh inquiry; transfer question was not examined, this is case of no inquiry and not inadequate inquiry, etc.

1.6 Appellant's submissions to above observations/views

The appellant submissions to above mentioned observations/ views/ comments of the learned Pr.CIT in the Revision Order and learned DR in his submissions dated 25-6-2026 are as follows. Firstly, the appellant submits that the appellant in it AWS-1 dated 23-02-2026; AWS-2 dated 25-06-2016 and AWS-3 dated 7-07-2026 has given its detailed replies, explanations and clarifications to all the above observations/ views/ comments point-wise/ para-wise for kind consideration of the Honourable Tribunal.

1.7 Submissions of the learned Appellant's Representative at the hearing

The appellant submits that its learned Appellant's Counsel at the hearings held on 15-06-2026 and 8-07-2026, has brought to the notice of the Honourable Tribunal about the facts of the appellant case, referred to details and documents submitted to the learned AO during scrutiny proceedings and also submitted to learned Pr.CIT in the course of revisionary proceedings and quoted few case laws relevant to the facts of the case, for kind consideration of the Honourable Tribunal. The appellant submit below its view points on the above observations and findings given by the learned Pr.CIT in the Revision Order and as well as to the comments of the learned DR, for kind consideration of the Honourable Tribunal:-

1.8 Gist of appellant's submissions

1.8.1 Detailed inquiries were conducted by the learned AO

As explained by the appellant's learned Representative at the hearing held on 8-07-2026, the learned AO in the notice u/s 142(1) of the Act dated 3-08-2022, vide queries Nos.1 to 8 (Page No.109-114 of Paper Book No.1) had raised detailed queries relating to taxing the income as LTCG and claiming the sales commission paid as deduction u/s 48(i) of the Act from LTCG and nature of business carried out by the appellant, sources of income and details of direct and indirect expenditure incurred by the appellant during AY 2020-21. The learned AO had

verified the details and documents submitted by the appellant vide its response dated 19-08-2022 (Page No.121 to 143 of Paper Book No.1) and on being satisfied accepted the same. In response to query no.3 of the Notice u/s 142(1) dated 3-08-2026, the appellant had furnished details regarding the assessment proceedings carried out for last 5 years (AYs 2015-16 to AY 2019-20) including the previous Revision Orders dated 18-3-2020 for AY 2015-16 and dated 30-3-2021 for AY 2016-17 to tax the income from the JDA as Business Income and submitted copy of the Honourable ITAT, Bangalore Order dated 2-09-2022 vide its letter dated 14-09-2022, for information of the learned AO. The appellant has informed the learned AO that the Honourable ITAT has held that Binnypet Land contributed into JDA is capital asset and JDA income is taxable as Capital gains and not as Business Income.

1.8.2 Stand taken by the learned AO is legally sustainable view under relevant provisions of the Income-tax Act.

The appellant submits that taking cognizant of the above findings of the Hon'ble ITAT and also considering the consistent stand taken by learned AOs in previous scrutiny assessments relating to AYs 2015-16 to 2018-19 and after proper and adequate inquiries, the views taken by the learned AO for AY 2020-21 that income from sale of undeveloped UDS in the said Binnypet Land is taxable as LTCG, is a legally sustainable view and **is in accordance with the provisions of section 45 read with section 2(47) of the Act.**

1.8.3 Learned Pr.CIT's directions for fresh inquiry is inconclusive and open ended one and tantamount to fishing and rowing inquiry.

In the Paras-18 and 19 reproduced herein above, the learned Pr.CIT is saying that the learned AO has neither made any enquiry and nor examined the taxability of sale consideration under all three heads, including Capital gains. Whereas the learned AO has raised queries on the issue of taxing of income as Capital gains and satisfied with the details furnished by the appellant, which is a plausible view. In the conclusion & decision para, the learned Pr.CIT has directed the AO to carry out necessary verification and examination regarding the treatment of income (under any one of the three heads) based on the facts of the appellant's case. **The**

appellant submits that said directions given by the learned Pr.CIT in the Revision Order is inconclusive and open ended one. This implies that according to learned Pr.CIT after investigations, the sale consideration may be taxable under head Business income or Income from Other Sources or even under head Capital gains, which is fishing and roving inquiry and asking the AO to deepen the investigations on the same issue. The appellant is of the opinion that the primary intention in giving such indecisive direction to the AO is to tax the income at a higher rate.

1.8.4 Learned Pr.CIT has, no where explicitly stated that the views adopted by the learned AO is legally untenable oneor contrary to the provisions of the Act

In the Revision Order, the learned Pr.CIT has no where explicitly stated that the views taken by the learned AO i.e. accepting the income arising from the Agreement of Sale as Capital gains, after detailed inquiries and on examination of records of the appellant and keeping in view of the Honourable ITAT Order dated 2-09-2022 in the appellant's case, is legally untenable under the provisions of the Income-tax Act and is not a plausible view. The learned Pr.CIT has just stated that no proper inquiries have been conducted by the AO to ascertain the correct head of income for taxing the sale consideration. Keeping this in view, the learned Pr.CIT has set aside the assessment order with a direction to AO to carry out necessary verifications and examinations regarding the treatment of income. This clearly indicates that the learned Pr.CIT is not sure under which head, the income would be taxable, either as Business income or Income from Other Sources or Capital gains.

1.8.5 Learned Pr.CIT, on interpretation of few clauses in the Agreement of Sale, has not categorically stated that the income is taxable under head Income from Other Sources

In the Revision Order, most of the paras are relating to taxing the income under head Income from Business based on the facts and terms contained in the previous JDA dated 28-3-2011. However, in the Revision Order **at later part of Para-17**,

the learned Pr.CIT has just made some remarks regarding inadequacy of stamp duty paid on Agreement of Sale; possession not given to the purchaser in terms of clause-13; no transfer u/s 2(47) took place in the absence of a sale deed; Agreement of Sale without Possession is merely a contract to sell without transfer of ownership and the conditions regarding transfer in terms of section 53A of the T.P.Act are not satisfied in the appellant's case. **But here and elsewherein the Revision Order, the learned Pr.CIT has not categorically concluded that based on his said observations on Agreement of Sale, the income is taxable under head Income from Other Sources or not. According to his directions in the last para, the AO has to ascertain the treatment of income under correct head, after conducting fresh verifications and examinations.**

1.8.6 The appellant has extinguished all its rights on the property sold (except legal possession) in favour of the Purchaser and therefore it is a transfer of capital asset within the meaning section 2(47)(i) and (ii) of the Act, but the learned Pr.CIT has not repudiated the stand of the appellant.

The appellant in its response dated 12-2-2025 to Notice u/s 263 dated 23-1- 2025 has given a detailed interpretations on various clauses contained in the Agreement of Sale in support of its view that the appellant has extinguished all its rights on the property sold, except legal possession in favour of the Purchaser. The learned Appellant's Counsel has also read out those clauses in the Agreement of Sale before the Honourable Tribunal at the hearing held on 8-07-2026. The appellant has also submitted in its response dated 12-02-2025 to the Notice u/s 263 dated 23-1-2025 that in terms of sub-clauses (i) and (ii) of Section 2(47) of the Act, on relinquishment and/ or extinguishment of all its rights in the Land (being a capital asset) sold by the appellant in favour of the Purchaser in terms of the Agreement of Sale dated 27-05-2019, the sale consideration received from said sale is taxable as Capital gains**. The appellant, to substantiate these view points, has referred to few case laws of Supreme Court and various High Courts. However, in the Revision Order, the learned Pr.CIT has kept silent on all said submissions of the appellant and not rebutted the stand of the appellant on extinguishment of rights of an immovable property resulting into transfer under section 2(47) of the Act.**

1.8.7 Honourable ITAT, Bangalore in its Order dated 2-09-2022 has considered all the observations on previous JDA terms made by the learned Pr.CIT in the present Revision Order.

As regards several observations on the JDA terms and other comments made by the learned Pr.CIT in the Revision Order in support of his view regarding taxing the sale consideration as Business income in line with the previous Revision Orders for AYs 2015-16 and 2016-17, the appellant submits that in the Order dated 2-09-2022, the Honourable ITAT, Bangalore has considered all such contentions of the Revenue and appellant's submissions to the same at length and held that Binnypet Land contributed under JDA is capital asset and said JDA is not in the adventure in the nature of trade and income from JDA is taxable. **The learned Pr.CIT is fully aware of the said decision but he chose to repeat the same line of arguments in the present Revision Order in order to show that the sale consideration is taxable as Business income and maintained silence on the said decision of Honourable ITAT**.

1.8.8 Cardinal principle laid down by the Honourable Supreme Court in several cases that the heads of income provided in various sections of the Income-tax Act are mutually exclusive and if the income from a source falls within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

In the above context, the appellant wish to refer to the decisions of Honourable Supreme Court in the following cases:-

(i) The United Commercial Bank Ltd. vs CIT – 32 ITR 688 (SC) (Page nos.335-346 of Case Law Compilation No.1);

(ii) CIT vs D.P.Sandu Brothers Chembur Pvt. Ltd. – 142 Taxman 713(SC) (Page Nos.347-353 of Case Law Compilation No.1) and

(iii) Nalinkant Ambalal Mody vs CIT (1966) 61 ITR 428 (SC) (Page Nos.353-363 of Case Law Compilation No.1).

(iv) Honourable Bombay High Court in Cadell Weaving Mill Co. Pvt. Ltd (Page Nos.364-380 of Case Law Compilation No.1), and

(v) Honourable Bombay High Court in M/s. Poonawalla Estate Stud Farm – IT Appeal No.541 of 2003 and connected matters dated 9-07-2025 (Page Nos. 382-409 of Case Law Compilation No.1)

The Honourable Bombay High Court has applied the above cardinal principle laid down by the Honourable Supreme Court in the above mentioned two cases.

The appellant in its AWS-1 dated 23-02-2026 in para-18 (at page nos.46 -48) has made detailed submissions on the above point and also referred to above case laws in support of its views.

The appellant submits that the Land sold by the appellant vide Agreement of sale is accounted for, as capital asset in its Books right from its receipts from a Partner of the Firm, hence any income received from said source is capital gains and cannot be taxable under head Income from Other Sources. As mentioned in Para 1.8.7 above, the Honourable ITAT, Bangalore that the entire Land held at Binnypet by the appellant is capital asset and the income received from JDA for sale of UDS is taxable as Capital gains and not as Business income as contended by Revenue previously. From the explanations and documents submitted by the appellant, the learned AO was fully aware of these facts, including the decision of the Honourable ITAT, Bangalore. Therefore, according to cardinal principle held by the Honourable Supreme Court, the stand taken by the learned AO based on the facts and circumstances of the appellant's case is legally correct and there was no necessity for the learned AO to widen the scope of his inquiry, as directed by learned Pr.CIT.

1.8.9 Sequence of events thatresulted into inclusion of new issue, i.e. taxing of income under head Income from Business, by the learned Pr.CIT in the Revision Order.

Considering the sequence of events happened during the revisionary proceedings in the case of the appellant, the following facts emerges out:-

(i) Based on the audit objections, in the Notice u/s 263 date 23-1-2025, the learned Pr.CIT has raised two issues, namely – (i) allowing the sales commission paid to M/s. BHN Foods as deduction against LTCG and (ii) taxability of sale consideration under head Income from Other Sources on interpretation of clause-13 of the Agreement of Sale.

(ii) In response to said Notice, the appellant has made a detailed submissions vide Response dated 12-02-2025, but in the Revision Order, the contentions of the appellant has not considered by the learned Pr.CIT. The learned Pr.CIT has not denied the legality of the stand taken by the learned AO in the assessment order on taxing of income as Capital gains in the original assessment order dated 29-09-2022.

(iii) It appears that in its Response dated 12-02-2025 when the appellant, on giving analysis of various clauses contained in the Agreement of Sale dated 27-05-2019, has brought to the notice of the learned Pr.CIT that on account of extinguishment of various rights, there is a transfer of capital asset and the income is taxable as Capital gains, then the learned Pr.CIT, based on the previous records of the appellant explored the possibility of adding new issue regarding taxing of income under head Income from Business based on terms contained in the previous JDA dated 28-3-2011 and also knowing the fact that the Revenue has challenged the Honourable ITAT, Bangalore decision dated 2-09-2022 before the Honourable Karnataka High Court in the said matter.

(iv) Therefore, the learned Pr.CIT, without providing any opportunity of hearing to the appellant, has added the new issue regarding taxing the income as Business income, by repeating most of the paras as contained in the previous Revision Orders for AYs 2015-16 and 2016-17 on various facts and terms relating to the previous JDA.

(v) From the above mentioned sequence of events, the appellant believes that once the learned Pr.CIT has noticed from the Response dated 12-02-2025 (58 pages as commented by learned DR) made by the appellant, that the initial stand of the Revenue regarding taxability of income under head Income from Other Sources will not withstand legal scrutiny, in view of section 2(47)(i) and (ii) of the Act, on an afterthought, the learned Pr.CIT has added the new issue; with an intention to tax the sale consideration at a higher rate, looking to the substantial amount of tax involved.

(v) The above opinion of the appellant is obvious in the fresh assessment proceedings under section 143(3) rws 263 of the Act, despite some observations made (on clause-13 of the Agreement of Sale and no transfer of ownership/title in favour of the Purchaser in the absence of sale deed) by the learned Pr.CIT at later

part of Para-17 of the Revision Order as pointed out above, the learned AO has not raised any single query on this aspect nor conducted any investigations on the aspect of taxing the income under head Income from Other Sources. The learned AO, straightway vide his Notice u/s 142(1) dated 19-01-2026 has raised queries only on taxing the income under head Income from Business. The learned AO, without considering the detailed objections submitted by the appellant, in its response dated 29-01-2026 to his Notice u/s 142(1) dated 19-01-2026 and in its response dated 18-03-2026 to his show cause notice dated 17-03-2026 on draft assessment order and disregarding the Honourable ITAT, Bangalore Order dated 2-09-2026 on the ground of appeal of the Revenue pending before Honourable Karnataka High Court, has passed the fresh assessment order under section 143(3) rws 263 dated 25-03-2026 taxing the income as Business income, raising an additional demand of Rs. 51.17 Crores on the appellant.

1.8.10 Honourable Karnataka High Court decision in case of M/s. Embassy Brindavan Developers vs CIT and upheld by the Honourable Supreme Court is identical to several facts of the appellant's case and support the stand of the appellant.

The appellant submits that the **Honourable Karnataka High Court in case of M/s. Embassy Brindavan Developers vs CIT (2022) 145 taxmann.com 527 (Karnataka) (Page Nos.104-109 of Case Law Compilation No.1)(SLP filed by the Revenue before Supreme Court was dismissed on 18-11-2024)** - a Partnership Firm of **Embassy Developers Group, Bengaluru**, several facts of the said case similar to the facts of the appellant's case, the income from sale of Land, (though initially purchased for setting up a Tech Park and incurred some expenditure on professional charges, etc) is taxable under head capital gains and not as business income as held by the CIT in the Revision Order. The Honourable High Court held that in view of the authority in Malabar Industrial Company Ltd and relying on the decision of same Court in Cyber Park Development and Constructions Ltd. merely because two plausible views are available and the AO has taken one view, the jurisdiction under section 263 of the Act cannot be exercised and further held that the invoking of section 263 in the facts and circumstances of the case was erroneous.

1.8.11 Honourable Supreme Court, High Courts and ITATs have held that the AO has taken one of the plausible views, then the CIT cannot subscribe or impose his difference of opinion and treat the assessment order as erroneous.

The appellant submits it is a well settled law that the learned AO has taken one of the plausible views based on the facts of the case, i.e. the income received from sale of Land/UDS by the appellant is taxable under LTCG, which is legally permissible view, when the learned Pr.CIT does not agree to the said legally tenable position due to difference of opinion and other reasons, then he cannot subscribe or impose his different views and treat the assessment order as erroneous and prejudicial to the interest of the Revenue. It is incumbent upon him to prove that the views/stand taken by the learned AO is in violation of the provisions of the Act. There are many case laws of Honourable Supreme Court (Malabar Industrial Company Co. Ltd, Max India Ltd, Nirav Modi, Sreeji Prints, etc) and Honourable High Courts and ITAT upholding the above proposition of law, i.e when the AO after adequate inquiry has adopted one of the plausible view, the CIT cannot by exercising revisionary powers under section 263 of the Act treat the assessment order as erroneous on the ground of differences/change of opinion. In Para-1 of AWS-2 dated 25-06-2026 (at page nos. 4-6), the appellant has listed out few important cases laws on this subject. The Honourable Tribunal is requested to kindly consider the same.

Part-II: Appellant's submissions to the First Counter dated 8-07-2026 given by the learned DR at the hearing held on 8-07-2026 in response to appellant's AWS-2 dated 25-06-2026

2. Appellant's response to Para-A. Three facts on record and one proposition of law

2.1 Reply to A.1 - The assessment order is silent

In Para-5under heading "Possible view needs a view and silent is not a view" of its AWS-3 dated 7-07-2026 (at Page Nos.8-12) the appellant has given submissions on the above point, placing reliance on 8 case laws of Honourable Supreme Court and High Court explaining that it is a settled position that non-discussion of an

issue in the assessment order does not by itself, makes the assessment order erroneous and prejudicial. The appellant requests the Honourable Tribunal to kindly consider the said submissions. At the time of hearing on 8-07-2026, the appellant's learned Representative has drawn the kind attention to the 3 cases of Honourable Supreme Court, namely – (i) PCIT vs V-Con Integrated Solutions Pvt. Ltd. dated 4-04-2025 (Page No.98 & 99 of Case Law Compilation No.1); (ii) ACIT vs Marico Ltd. (SLP(Civil) Diary No.7367/2020 dated 1-06-2020); and JCIT vs Cognizant Technology Solutions India (P) Ltd. (2023) 452 ITR 224(SC).

2.2 Reply to A.2 – The only show-cause notice did not touch the issue.

In Para-4 under heading "No show cause notice on the Rs.460 Crores issue" of its AWS-3 dated 7-07-2026 (at Page Nos. 7-8) has explained on verification of the detailed submissions made and documents given in its responses dated 19-08-2022 to the relevant queries raised in Notice u/s 142(1) dated 3-08-2022, on scrutiny of the terms and conditions contained in the Agreement of Sale dated 27-05-2019 and on taking cognizance of the Honourable ITAT, Bangalore Order dated 2-09-2022 in appellant's own case for AYs 2015-16 and 2016-17 submitted by the appellant vide its letter dated 14-09-2022 and considering the consistent stands taken by the Revenue in previous AYs scrutiny assessments, the learned AO has concluded that the sale consideration is taxable under head Capital gains and not under head Income from Business, as held by learned Pr.CIT in his previous Revision Orders. Hence, there was no need for the learned AO to issue a specific show cause notice on income characterization point, as contended by the learned DR. The Honourable Tribunal is requested to kindly consider the said submissions.

2.3 Reply to A.3 – When the directed inquiry was made, the result changed.

The appellant submits in response to 142(1) dated 19-01-2026 during fresh assessment proceedings, the appellant has brought to the notice of the learned AO regarding the extinguishment of all the rights (except legal position) on the property sold vide Agreement of Sale dated 27-05-2019. It appears that like in the original assessment order proceedings, the learned AO was convinced the

impugned transaction will not taxable under head Income from Other Sources, as observed by the learned Pr.CIT and hence no queries were raised on the said point. The appellant vide its submission dated 29-01-2026 has given detailed justification with facts of the case that the impugned transaction will be taxable as Capital gains and not as Business income as opined by the learned Pr.CIT. The appellant has submitted a copy of the Honourable ITAT, Bangalore Order dated 2-09-2022 for their perusal second time. The appellant in its response dated 18-03-2026 to learned AO's show cause notice dated 17-3-2026 forwarding the draft assessment order u/s 263, has reiterated its detailed objections against taxing the income under head Income from Business. In the fresh assessment order u/s 263 dated 25-03-2026, the learned AO has just repeated most of the observations of the learned Pr.CIT in the paras relating to JDA dated 28-03-2011 contained in the Revision Order. He has not considered the detailed objections given by the appellant in the fresh assessment order. No new material or facts was brought on record or any new findings was given by the learned AO in the fresh assessment order. The learned AO has stated that since the Revenue has filed an appeal against the ITAT Order dated 2-09-2022 before Honourable Karnataka High Court, the issue regarding taxing of income as Business income has not attained finality. Therefore, the learned DR's contention that when the directed inquiry was made, the result changed is based on incorrect analysis of the fresh assessment proceedings and the said assessment order.

2.4 Reply to A.4 – The proposition of law – Explanation 2(a) to Section-263

The appellant in Para-1 of its AWS-2 dated 25-6-2026 (at Page Nos.1-5) has explained the details furnished to learned AO and explanations given in response to his Notice u/s 142(1) dated 3-08-2022 .On verification of those submissions and documents including the Agreement of Sale and considering the ITAT Order dated 2-9-2022, the learned AO has arrived at a conclusion that the sale consideration is taxable as capital gains and not as Income from Other Sources nor as Business Income. Further in Paras 2 to 7 of its AWS-3 dated 25-6-2026 (at page nos. 2-17) the appellant has replied at length all the observations made by the learned DR under heading-IV of Revenue's Submissions dated 25-06-2022. In para-1 of Part-1

herein above, the appellant has explained that in the Revision Order, the learned Pr. CIT, without contradicting the legal position of the AO's acceptance of LTCG offered by the appellant after adequate inquiries, verification of explanations and documents submitted by the appellant and on examination of relevant records of the appellant, and knowing fully that on relinquishment/extinguishment of all its rights in the property sold, the Agreement of Sale is falls within the ambit of transfer in terms of section 2(47)(i) and (ii) of the Act and as such fresh inquiry/ verification whether the income is taxable under other heads are not warranted. When after proper inquiries and due application of mind, when the learned AO concurs with the views of the appellant that income is taxable as Capital gains, which indicates that AO has taken a stand/views and there is no provision under the Income-tax Act to bind him to record his findings in the assessment order. In such cases, the learned Pr.CIT is required to prove that the stand taken by the AO is not legally sustainable and is contrary to section-45 or any other relevant provisions of the Act. But in the present case, the learned Pr. CIT is of the view that the sale consideration is taxable under any one of the three heads, i.e. as Business Income or Income from Other Sources or Capital gains (Kindly refer paras -18,19 and conclusion and decisions contained in the Revision Order reproduced in Para-1 of Part-I hereinabove).

3. Appellant's Response to Para-B. Reply to Points 1 to 7 of the Additional Submissions (AWS-2) dated 25-6-2026

3.1 Response to Point-1(a) to (d) "Plausible view", adequacy of inquiry, "fishing and roving" and consistency.

******The appellant, in its AWS-3 dated 7-07-2026 at Para- 3 - Asking for documents is not inquiry); Para-4 - No show cause notice on the Rs.460 Crores issue; Para-5 – "Possible view" needs a view silent is not a view; Para-6 – The earlier ITAT Order does not help and Para-7 – Section 263(1) expressly authorises Remand for fresh inquiry* has given an elaborate submissions on all these points with supporting case laws in response to Revenue's Submissions dated 25-06-2026. The appellant requests the Honourable Tribunal to kindly consider the said submission given in the above mentioned Paras of AWS-3 dated 7-07-2026.

* From the submissions given in the above mentioned Paras of AWS-3 dated 7-07-2026 and as explained in Para-1 herein above, the Honourable Tribunal would kindly observe that there is no complete absence of inquiry as alleged by the learned DR. Further as explained in Para-1 of Part-I herein above, the learned Pr. CIT in the Revision Order has not given any definite conclusion under which head the sale consideration is taxable - whether as Business Income or Income from Other Sources or Capital gains? In Conclusion and Decision para, the learned Pr. CIT has directed the learned AO to pass fresh Order after carrying out the necessary verification and examination regarding treatment of income arising out of Agreement of Sale dated 27-05-2019. This direction itself indicate that the learned Pr. CIT is not sure of the correct head of income and is asking the learned AO to find out the same after carrying out necessary verifications. Therefore, the learned DR's contention that the direction is specific and not roving is incorrect.

* As explained in Para-1 of Part-I hereinabove, no where in the Revision Order, the learned Pr. CIT has contradicted the position taken by the learned AO, i.e taxing of income as Capital gains is against the provisions of the Act. The learned Pr.CIT is just saying that the income may be taxable under other heads of income. According to cardinal principle laid down by Honourable Supreme Court, as explained in Para-1 of Part-I hereinabove, when the learned AO from the records found that the Land sold is capital asset and gain is taxable as Capital gains, there was no necessity for him to expand the scope of his inquiry whether the said income can be taxed under any other heads, as directed by the learned Pr.CIT.

* As regards learned DR's contention that the plea of consistency fails on four independent grounds, the appellant has made detailed submissions on all four points in paras 3 to 7 in its ARS-3 dated 7-07-2026.

3.2 Appellant's Response to Point 2 – Natural justice: the alleged "new issue", the 40 day interval, Universal Music, Perfect Filaments and Poovaya case laws

In para-2 of the AWS-2 dated 25-06-2026 (at page nos 6-9) the appellant has explained that no opportunity of hearing was provided to the appellant, as propounded by the Honourable Supreme Court in Amitabh Bachchan case and the

inclusion of new issue is against the principles of natural justice. In para-8 of the AWS-3 dated 7-07-2026, the appellant has explained this proposition in law. As pointed out by the learned DR, when the appellant has made 58 page submissions vide its Response dated 12-02-2025 in response to Notice u/s 263 dated 23-01-2025, but the learned Pr. CIT has not considered the said submissions and remained silent on the point whether extinguishment of rights in the present case results into transfer under section 2(47) of the Act or not and the income is taxable as Capital gains. The learned Pr. CIT is saying that the learned AO has not inquired this aspect.

The learned DR's contention that the learned Pr. CIT's operative direction rests on the noticed characterisation issue and is severable, the order would survive even if every observation on business income were excluded, the appellant submits that most of the paras in the Revision Order are relating to the facts and terms contained in the JDA to prove that the income is taxable as Business income and a small para (at later part of para-17) is earmarked for the terms contained in the Agreement of Sale. The learned Pr. CIT has not categorically stated that based on the terms of the Agreement of Sale the income is taxable under head Income from Other Sources and has not rejected the contention of the appellant that there is extinguishment of rights. As explained in Para-1 of Part-I hereinabove, the learned Pr. CIT has noticed from the said submissions of the appellant that his initial stand of taxability of income under head Income from Other Sources will not succeed before the law and therefore, afterthought, he has added the new issue, i.e. Business income point, based on the examination of previous records of the appellant and the appeal pending before the of the Honourable Karnataka High Court on the same issue.

3.3 Appellant's Response to Point-3 – Capital contribution : Section 14 of the Partnership Act, Section 45(3), DLF Universal and Sai Teja case laws.

The appellant, in its Response to Para-5.5 of the RWS dated 24-06-2026 in its AWS-3 dated 7-07-2026 (at page nos.30-31) has explained the nature of expenses included in the Capital WIP and submitted that incurring some professional charges for an abandoned proposal and for seeking expert's services for entering into JDA does not constitute that the appellant was engaged in the real estate

development activities. The decision of the Honourable ITAT, Bangalore has considered all these aspects in its Order dated 2-09-2022 and held that Binnypet Land is capital asset. The appellant has recorded and treated the said Land as capital asset in its Books till the end of its disposal vide Agreement of Sale dated 27-05-2019.

3.4 Appellant's Response to Point-4 – The JDA is not an adventure in the nature of trade and Point-6 - Para-17 of the Revision Order

The appellant in paras 19.2,19.3,19.6 to 19.8 and 20.1 to 20.3 of its AWS-1 dated 24-02-2026 has given detailed submissions on the above mentioned points. The Honourable ITAT, Bangalore in its Order dated 2-09-2022 has considered all these submission of the learned Pr. CIT and learned DR, at length. Besides, the appellant in paras-4 of its AWS-2 dated 25-06-2026 and in para 12.3 of AWS-3 dated 7-07-2026 has given detailed explanations on the above points. The appellant requests the Honourable Tribunal to kindly consider the said submissions.

3.5 Appellant's Response to Point-5 – Fixed Asset/Capital WIP in every Balance-sheet (taken with Point-10 – the JAO's statement

The appellant in paras 12.4 of its AWS-3 dated 7-7-2026 (Reply to Para-5.4(A) and 5.4(B) of RWS-1 dated 25-06-2026) has given detailed submission on the above points. The Honourable Tribunal is requested to kindly refer to the said submissions.

3.6 Appellant's Response to Point-7 – The business expenditure claimed in the Return

The appellant in paras-12.4 of its AWS-3 dated 7-07-2026 (Reply to Para-5.4(C) and in para-7 of its AWS-2 dated 25-06-2026 has explained the nature of General and Admin expenses claimed in the ITR by way of set off u/s 71(2) of the Act. The appellant requests the Honourable Tribunal to kindly consider the said submissions.

4. Appellant's Response to Part C – Reply to the response on the Remand Report – Points 8,9 and 11)

4.1 Appellant's Response to Point-8 – Assumption of jurisdiction

The appellant, in para-1 of its AWS-2 dated 25-06-2026 and in paras 2 to 7 of its AWS-3 dated 7-07-2026 and now also in para-1 of Part-I hereinabove has given detailed submissions on the above point with supporting case laws. The appellant requests the Honourable Tribunal to kindly consider the said submissions.

4.2 Appellant's Response to Point-9 – Audit Objection and adverse inference

The appellant in para-9 of its AWS-2 dated 25-06-2026 has given its submissions on the said point, for kind consideration of the Honourable Tribunal.

4.3 Appellant's Response to Point-11 – Embassy Brindavan Developers vs CIT and DCIT vs Mathikere Ramaiah Seetharaman case laws.

In para-11 of its AWS-2 dated 25-06-20266, the appellant has given gist of the Honourable Karnataka High Court decision in Embassy Brindavan Developers vs CIT (2022) 145 taxmann.com 527 (Karnataka) (Page nos. 104-109 of Case Law Compilation No.1) and dismissal of SLP filed by the Revenue by the Honouarable Supreme Court. Most of the facts of the said case is identical to the facts of the appellant's case. The appellant has only one parcel of Land at Binnypet and initially the same was contributed into JDA for revenue share entitlements and later the remaining undeveloped portion of Land was sold to the Developer. The appellant received revenue share in terms of JDA and on its receipts the same were offered as Capital gains during AYs 2015-16 to 2019-20 and the sale consideration received from Agreement of Sale was offered to tax as Capital gains in the AY 2020-21. In all these AYs, the learned AOs have taxed the said income as Capital gains. But based on audit objections for AYs 2015-16 and 2016-17, the learned Pr. CIT has directed the AO to tax the said income as Business income. In the appellant's appeal, the Honourable ITAT has held that the Land is capital asset and income is taxable as Capital gains and not business income.

In DCIT vs Mathikere Ramaiah Seetharaman, the Honourable ITAT, Bangalore has confirmed the decision of learned CIT (Appeals) holding that ***"the assessee had consistently disclosed the Land as Fixed Asset in his Balance-sheet and had***

never treated it as stock-in-trade. Merely entering into a JDA does not convert a capital asset into stock-in-trade, nor does the sharing of revenue make the assessee a real estate developer."

5. Appellant's Response to Part-D –Reply to Point-12 – 'the transfer" under section 2(47) and the stamp duty material.

In para-12 of its AWS-2 dated 25-06-2026, the appellant has given detailed submissions on the above points such as reasons for not executing sale deed, inadequate stamp duty, insertion of no possession clause -13 in the Agreement of Sale, the clauses in the Agreement sale proves the extinguishment of rights in favour of the Purchaser, extension of Power of Attorneys, etc. In para-2 of its AWS-3 dated 7-07-2026, the appellant has again explained the above issues. In Para-1 of Part-I hereinabove, the appellant has pointed out that the detailed submissions made by the appellant in its Response dated 12-02-2025, the learned Pr. CIT has maintained silence on said submissions and has not refuted the fact that the provisions of section 2(47)(i) and (ii) will not apply in the present case. The appellant requests the Honourable Tribunal to kindly consider the said submissions of the appellant.

Part-III : Appellant's submissions to the Second Counter dated 8-0-2026 given by the learned DR at the hearing held on 8-07-2026 in response to appellant's AWS-3 dated 7-07-2026.

5. Appellant's response to Para-A – Five facts and propositions that govern this appeal.
A.1 Order is silent; A.2 The only show-cause notice did not touch the issue; A.3 When the directed was made, the results changed; A.4 The law; and A.5 This is case of no inquiry, not of inadequate inquiry.

The appellant in its submission made in Paras-1.1 to 1.10 of Part-1 and in Paras-2.1 to 2.4 and in 3.1 of Part-II hereinabove and in paras-2 to 7 of its AWS-3 dated 7-07-2026 has explained in detail all the above five facts as pointed out by the learned DR. As explained therein, when the learned AO after proper inquiries and on verification of the information and documents submitted by the appellant and on examination of the records of the appellant, has accepted that the income is

taxable under head Capital gains, it is a legally sustainable view. As explained in Para-1 of Part-I hereinabove, the learned Pr. CIT has not contradicted the stand of the learned AO that taxing of income as Capital gains is against the provisions of the Income-tax Act. The appellant requests the Honourable Tribunal to kindly consider the said submissions.

6. Appellant's Response to Paras – B.1 -The contention that AO, on seeing the Agreement concluded that it was a transfer u/s 2(47)(i) and (ii); B.2 - The contention that documents were called for and examined, and that the extent of inquiry is the AO's prerogative; B.3 – The contention that no show-cause notice on the Rs.460 Crores issue was required and that the AO followed the consistent position of earlier years; B.4 – The authorities on acceptance inferred from silence; and B.5 – The Tribunal's Order dated 2-09-2022.

As mentioned in para-5 above, the appellant has made its detailed submissions in Paras-2 to 7 of its AWS-3 dated 7-07-2026 (at page nos. 2-17) on all the above points. The appellant requests the Honourable Tribunal to kindly consider the said submissions

7. Appellant's response to Para-C –Reply on the power to remand

The appellant submits that in para-7 of its AWS-3 dated 7-07-2026 (at page nos. 14-17), the appellant has given detailed explanations on the above point. In Para-1 of Part-I herein above, the appellant has explained that the directions given by the learned Pr. CIT is indecisive and open ended one. The opinion of the learned Pr. CIT that the sale consideration may be taxable under any of the three heads and asking the AO to find out the correct head of income after fresh inquiry with a view to levy higher tax, tantamount to fishing and roving inquiry. Honourable Supreme Court, High Courts and ITATs in several cases have held that the AO has taken one of the plausible view, then the CIT cannot subscribe or impose his difference of opinion and treat the assessment order as erroneous for conducting further inquiries. The learned Pr. CIT has to prove that the position taken by the AO is not legally permissible under the Income-tax Act.

8. Appellant's response to Para-D – Reply on Natural Justice

The appellant in para-2 of its AWS-2 dated 25-06-2026, in para-8 of its AWS-3 dated 7-07-2026 and in para-3.2 herein above has explained in detail that the learned Pr. CIT has failed to provide an opportunity of hearing before inclusion of the new issue in the Revision Order and the said action is against the principles of natural justice. The learned Appellant Counsel at the hearing held on 8-07-2026 has explained the said facts referring to relevant case laws before the Honourable Tribunal.

9. Appellant's response to Para-E –Reply on the BHN Foods brokerage issue

In para-9 of its AWS-3 dated 7-07-2026, the appellant has given detailed submissions on the above point. At the time of hearing held on 8-07-2026, the learned Representative of the appellant has brought to the kind notice of the Honourable Tribunal that in the Conclusion and Decision para of the Revision Order, the learned Pr. CIT has not given any direction to AO on the said issue and as a result, the learned AO in the fresh assessment proceedings u/s 263 of the Act has not considered the said issue.

10. Appellant's response to Para-F – Reply on the "transfer" under section 2(47) and on de-facto possession.

The appellant in paras-10 (at page nos. 20-21) and 13(iii) (at page no.36) of its AWS-3 dated 7-07-2026 and in Paras has given explanations in the above matter. Further in Paras 1.8.2; 1.8.4; 1.8.5; 1.8.6 in Part-I hereinabove has made detailed submissions on the above issue. The learned Pr. CIT has no where explicitly stated that the stand taken by the learned AO is legally untenable one or contrary to the provisions of Income-tax Act. He is of the opinion that the learned AO has not conducted any inquiry whether the sale consideration would be taxable under head Income from Other Sources or Income from Business, and hence the assessment order is erroneous due to lack of inquiry on these aspect and therefore he has directed the learned AO to carryout fresh inquiry on the treatment of income to find out under which head the said income would be taxable.

11. Appellant's response to Para-G – Reply on the business-income material

G.1 Partner composition; G-2 The accounting explanations; G-3 The decision on other assesses; G-4 The pricing on Net Present Value; G-5 The fresh assessment order dated 25-03-2026

The appellant, in response to Part V – The income is Business income, given in Revenue's Submissions dated 25-06-2026, in its AWS-3 dated 7-07-2026 at paras – 12.1 to 12.4 (at page nos. 21-35) has given detailed explanations on each sub-headings raised therein by the learned DR. The appellant requests the Honourable Tribunal to kindly consider said submissions of the appellant. The appellant submits that all these points raised by the learned Pr. CIT based on the facts and covenants contained in the JDA dated 28-03-2011 and appeared in the previous Revisionary Orders u/s 263 dated 18-03-2020 for AY 2015-16 and dated 30-03-2021 for AY 2016-17 have been considered by the coordinate Bench of this Honourable Tribunal in its Order dated 2-09-2022 at length. The Honourable Tribunal has held that the Binnypet Land is capital asset, JDA is not adventure in the nature of trade and income from JDA is taxable under head Capital gains and not as Business income as held by then learned Pr. CIT.

12. Appellant's response Para-H - Reply on the audit objection and on the section 263 authorities.

The appellant in para-9 of its AWS dated 25-06-2026 (at page nos.14-15) has replied to the observations of the learned DR in the Revenue's submissions dated 25-06-2026 on the issue regarding Audit objection. Further, in its ASW-3 dated 7-07-2026, the appellant has given its detailed response to the case laws referred to by the learned DR in the Revenue Submissions dated 25-06-2026 under heading III – The Law on section 263. The appellant submits that those cases are quite distinguishable on the facts and circumstances of the appellant's case and are not comparable.

13. Appellant's response to Para-J – Conclusion

The appellant in its previous written submissions –(1) AWS-1 dated 23-02-2026; (2) AWS-2 dated 25-06-2026; (3) AWS-3 dated 7-07-2026 and in Part-I at Paras - 1.1 to 1.11 has given its detailed explanations on the all the contentions mentioned

by the learned DR in Para-J Conclusion. The appellant has stated that after proper inquiry and on verification of explanations and documents submitted by the appellant and on examination of records of the appellant and taking cognizant of the Honourable ITAT Order dated 2-09-2022, the learned AO has accepted the LTCG offered by the appellant in its ITR, which is a plausible view. The learned Pr. CIT in the Revision Order has not denied that the views adopted by the learned AO is legally incorrect and against the relevant provisions of the Act. The learned Pr. CIT has not considered the 58 page of the appellant's response dated 12-02-2025 and has not contradicted that there is no extinguishment of rights conferred by the Agreement of Sale in favour of the Purchaser and is not a transfer of capital asset within the meaning of section 2(47) (i) and (ii) of the Act. The learned Pr. CIT's only grievance in the Revision Order is that the learned AO has not made inquiries whether the said income would be taxable under other heads of income. The learned Pr. CIT is fully aware of the fact that the Honourable ITAT, Bangalore in its Order dated 2-09-2022 has in the appellant's own case has held that the same Land at Binnypet is capital asset; JDA is not adventure in the nature of trade; income from JDA is taxable as Capital gains and not as Business income and the previous Revision Orders dated 18-03-2020 and 30-03-2021 for previous AYs have been quashed by the Honourable Tribunal on the same issue. The learned Pr. CIT is aware that in the case of the appellant, during the scrutiny assessments proceedings for AYs 2015-16 to 2018-19 has consistently taken a view that the Binnypet Land is capital asset and income received from JDA is taxable as Capital gains. Despite knowing this, the learned Pr. CIT has repeated all those observations relating to JDA, as contained in the previous Revisionary Orders, to prove that the assessment order is erroneous. By adding this new issue in the Revision Order without providing no opportunity to the appellant, indicates that the Revenue wants to tax the sale consideration at a higher rate, looking to the substantial amount of tax involved in the appellant's case.

The appellant prays this Honourable Tribunal to consider the above written submissions in response to Revenue's first and second counters dated 8-07-2026 , besides all its previous Written Submissions dated 24-2-2026 (AWS-1); Additional Written submissions dated 25-6-2026 (AWS-2) and Response dated 7-07-2026 to

Revenue's Submissions dated 25-06-2026 (AWS-3) favourably and allow the appeal filed by the appellant for the advancement of substantial cause of justice.

Place: **Bengaluru**

Date : **14-07-2026APPELLANT**

8.1 Further, the assessee has submitted the following additional written submissions:

BEFORE THE HON'BLE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU 'A' BENCH, BANGALORE.

Name & Address of the Appellant	**M/s ETA Star Infopark** No. 501, 502, Front Wing, 5th Floor, North Block, Manipal Center, 120, Dickenson Road, Bengaluru 560042.
PAN	AACFE6010C
Assessment Year	**2020-21**
Order appealed against passed by	**Order under section 263 of the Income-tax Act, 1961 ("the Act") dated 24/03/2025 passed by learned Principal Commissioner of Income-tax, Bangalore-1, Bangalore.**
ITA No.	**1194/BANG/2025**

Additional Written Submissions pursuant to hearing held on 15-06-2026 in the appellant's case:

The appellant in continuation to the written submission in support of the revised grounds of appeal dated 23.02.2026 and filed before this Hon'ble Tribunal on 24.02.2026 is filing the following submissions:

1. **Based on the observations of Learned Pr.CIT's in para-19 of the Revision Order dated 24-03-2025, learned Departmental Representative at the time of hearing on 15-06-2026 has pointed out that the AO had not examined the issue of treatment of sale consideration of impugned Land under heading income from Business or income from Other sources or Capital gains. He has further pointed**

out in the show cause notice dated 17-09-2022 issued to the assessee by the learned Assessing Officer during the course of assessment proceedings, nothing mentioned about the verification of issue regarding taxability as business income. Hence, the assessment order is erroneous on these grounds. (Kindly refer to Revised Grounds of Appeal Nos.1 to 11)

The appellant's submissions to the above observations are as follows:-

- The learned AO in the notice u/s 142(1) of the Act dated 3-08-2022, vide queries Nos.5,6,7, 8.a) to 8.e) (Page No.109-114 of Paper Book No.1) had raised detailed queries relating to taxing the income as LTCG and claiming the sales commission paid as deduction u/s 48(i) of the Act from LTCG. The learned AO had verified the details and documents submitted by the appellant vide its response dated 19-08-2022 (Page No.121 to 143 of Paper Book No.1) and found the same in order. The learned AO on finding that the appellant has neither carried out any business activities nor earned any income from business during AY 2020-21, has disallowed the General and Administrative expenses of Rs.72,22,280/-claimed as set off u/s 71(2) of the Act on the ground of accounting principle "matching" concept.
- Learned AO has issued show cause notice dated 17-09-2022 after issuance of Notice u/s 142(1) of the Act calling for exhaustive details with regard to income offered as LTCG and details on all direct and indirect expenditure exceeding Rs.5 Lakhs. On verification, the learned AO has satisfied with the documents and explanations given by the appellant vide its response dated 19-08-2022 and came to the conclusion that the sale consideration is taxable under head Capital gains. The learned AO has issued the said show cause notice to disallow General and Admin expenses of Rs.72,22,280/-claimed as set off u/s 71(2) in the ITR, on finding that the appellant has no business income earned during the AY 2020-21, on the ground of accounting principle matching concept.
- In the case of appellant for AYs 2015-16 to 2018-19, the learned AOs, after complete scrutiny, has consistently held that Binnypet Land contributed under JDA dated 28-03-2011 is capital asset and the income received from said JDA is taxable as Income from Capital gains. The learned AOs had disallowed the General and Admin expenses claimed as set off u/s 71(2) of

the Act on the ground of accounting principle "matching" concept for said AYs.

- **During the assessment proceedings, the appellant had furnished a copy of the Order dated 2-9-2022 of Hon'ble ITAT, Bangalore for AYs 2015-16 and 2016-17 passed in the case of the appellant. (Page No.01-73 of Case Law Compilation No.1). In the said Order, the Hon'ble ITAT has held that Binnypet Land contributed by the appellant to JDA dated 28-03-2011 is capital asset and income received from said JDA is taxable under head Capital gains. The said JDA is not adventure in the nature of trade and hence same cannot be taxed under head Income from Business as held by the learned Pr. CIT in his previous Revision Orders for the AY 2015-16 and AY 2016-17.**
- Taking cognizant of the above findings of the Hon'ble ITAT and also considering the consistent stand taken by learned AOs in previous scrutiny assessments relating to AYs 2015-16 to 2018-19, the views taken by the learned AO for AY 2020-21 that income from sale of undeveloped UDS in the said Binnypet Land is taxable as LTCG, which is a plausible view. Therefore, the learned Pr. CIT is not legally permissible in passing the impugned revision order, even if there are two plausible views on the said issue.
- It is well settled law that the learned AO has taken one of the plausible views based on the facts of the case, i.e. the income received from sale of UDS by the appellant is taxable under LTCG, which is legally permissible. Then the learned Pr. CIT does not agree to the same due to difference of opinion and hence he cannot subscribe or impose his different view and treat the assessment order as erroneous and prejudicial to the interest of the Revenue.
- As far as adequacy of inquiry is concerned, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is Assessing Officer's prerogative to make inquiry to the extent he feels proper. The Pr. CIT by invoking revisionary powers under section 263 cannot impose his own understanding of the extent of inquiry.

- Revisionary powers of the Commissioner under section 263 of the Act are supervisory and not intended to substitute the Commissioner's judgment for that of the AO, provided the AO's decision was made after due application of mind and inquiry.
- If the AO has made a proper inquiry, examined the facts and relevant evidence and taken a plausible view in law, the Commissioner cannot revise the assessment order simply because he disagrees with that view or feel a more detailed inquiry could have been made.
- In the appellant's case, the directions given by learned Pr. CIT amounts to ordering for making fishing and roving enquiries. It is evident from the observations made in Para-19 and in the last para – 'Conclusion & Decision' of the Revision Order that the learned Pr. CIT has not given any specific direction to the learned AO under which head the impugned income is taxable, whether under the head income from business or income from other sources or as capital gains.
- Thus, in the case of the appellant, when the learned AO had made detailed enquiries and verifications on facts of the case, the learned Pr. CIT was not justified in law in setting aside the assessment order, directing the AO to carry out further verification and examination to ascertain whether said income falls either under head Income from other sources or under head Income from Business.
- In the following cases, the Honourable ITATs and High Courts have held that the matter/ issue cannot be remitted for a fresh consideration to the AO to conduct further enquiries without a clear finding that the order is erroneous. In such matters, to remand the matter/issue to AO would imply and mean that the CIT has not examined and decided whether or not the order is erroneous but has directed the AO to decide the aspect/question.

A. Case Laws holding that CIT without deciding himself, cannot remand the matter and direct the AO to conduct further investigations on the issues as he feels deep inquiries are required.

(1) SC in Pr. CIT vs V-CON Integrated Solutions Ltd. (Case Law Compilation No.1 at page nos.98 & 99)

(2) Delhi HC in ITO vs DG Housing Projects Ltd. (Case Law Compilation No.5 at page nos.1039 to 1057)

(3) Bombay HC in Pr. CIT vs Gabriel India Ltd. (Case Law Compilation No.1 at page nos.202)

(4) Delhi HC in Pr. CIT vs Brahma Centre Development Pvt. Ltd. (Case Law Compilation No.1 at page nos. 155 to 159)

(5) Bangalore ITAT in Mahesh Reddy vs Pr. CIT (Case Law Compilation No.2 at page nos.428,430,432, 433 & 444)

(6) Bangalore ITAT in Poovaya & Cos. Vs Pr.CIT (Case Law Compilation No.5 at page nos. 970,983,986,987 & 988)

B. Case Laws holding that when the AO has done adequate inquiries and verification, the CIT cannot treat the assessment order as erroneous and cannot set aside the samefor further inquiries

(7) SC & Gujarat HC in Pr. CIT vs Shreeji Prints Pvt. Ltd. (Case Law Compilation No.1 at page nos.86 &87)

(8) SC & Bombay HC in Nirav Modi vs Pr.CIT (Case Law Compilation No.1 at page nos.93,94 & 96)

(9) KAR HC in CIT vs Chemsworth Pvt. Ltd. (Case Law Compilation No.1 at page nos.101 & 102)

(10) Delhi HC in CIT vs Sunbeam Auto Ltd. (Case Law Compilation No.1 at page nos.193 to 195)

(11) Bangalore ITAT in Bhavna Credit Cooperative Society Ltd. vs Pr. CIT (Case Law Compilation No.4 at page nos.932,933,935 and 937)

(12) Bangalore ITAT in Suvilas Properties Pvt. Ltd. vs Pr. CIT (Case Law Compilation No.4 at page nos. 965 & 966)

C. Case laws holding that when there are different views and AO has adopted one of the plausible view, after conducting adequate inquiry, CIT cannot set aside the assessment order on the ground of erroneous.

(13) SC in Malabar Industrial Co. Ltd vs CIT (Case Law Compilation No.1 at page no.77)

(14) SC in CIT vs Max India Ltd. (Case Law Compilation No.1 at page no.80)

(15) SC & Gujarat HC in Pr. CIT vs Shreeji Prints Pvt. Ltd. (Case Law Compilation No.1 at page nos.86 &87)

(16) KAR HC& SC in Embassy Brindavan Developers Ld. Vs CIT (Case Law Compilation No.1 at page nos.106 to 108)

(17) KAR HC in CIT vs Aztec Software Technology Ltd. (Case Law Compilation No.1 at page nos.116 to 118)

(18) KAR HC in CIT vs Cyber Park Development and Constructions Ltd. (Case Law Compilation No.1 at page no.122)

(19) Bangalore ITAT in Adarsh Souharda Sahakari Niyamit vs Pr.CIT (Case Law Compilation No.5 at page Nos. 997, 998, 1001, 1005, 1010, 1011,1012,1014,1017 to 1019)

(20) Bangalore ITAT in Sri Vishnuvilas Souharda Pattina Sahakari Sanghas Niyamit vs ITO (Case Law Compilation No.5 at Page nos.1020 to 1024, 1029 & 1037)

(21) Bangalore ITAT in Primary Agricultural Credit Cooperative Society vs Pr.CIT (Case Law Compilation No.4 at page no. 955)

(22) Bangalore ITAT in Sri Vishnvilas Souharda Pattina Sahakari Sanghas Niyamita vs ITO (Case Law Compilation No.5 at page nos. 1020 to 1024 , 1029 & 1037)

2. Learned DR placing reliance on Supreme Court decision in case of CIT vs Amitabh Bachchan pointed out there is nothing in the section 263 to issue a mandatory show cause notice to the assessee on the issues on which CIT is intending to exercise the revisionary powers (Kindly refer to Revised Grounds of Appeal Nos.19 and 20)

- In this regard, the appellant invite the kind attention of the Honourable Bench to the last sentence of Para-11 of the said judgment, which is reproduced below:-

"11.xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
Of course, there can be no dispute that while CIT is free to exercise his jurisdiction on consideration of all relevant facts, a full opportunity to controvert the same and to explain the circumstances surrounding such facts, as may be considered relevant by the assessee, must be afforded to him by the CIT prior to the finalization of the decision."

- From the above observations, it is clear that though the CIT is not required to issue formal notice on all the grounds on which he is exercising revisionary powers under section 263, but as held by Honourable Supreme

Court, a full opportunity to refute the said issue and to explain the circumstances surrounding such facts as may be considered relevant by the assessee must be afforded to the assessee by the CIT, prior to finalization of the Revision Order. Otherwise, it would violate the principles of natural justice.

- **Bombay High Court in case of Pr. CIT vs M/s Universal Music India Pvt. Ltd in ITA No.238 of 2018 decided on 19-04-2022** has referred to the above principles laid down by the Honourable Supreme Court in case of CIT vs Sri Amitabh Bachchan. This Honourable Tribunal is requested to kindly refer to paras – 7, 8 & 9 of said judgment. The SLP filed by the Revenue against this judgment was dismissed by the Honourable Apex Court.
- **ITAT, Mumbai in case of Perfect Filaments Ltd. vs Pr. CIT vide its Order dated 10-09-2025, in paras-12 & 13,** has considered the issue of providing opportunity of hearing before passing the Revision Order u/s 263 of the Act, as laid down by the Honourable Supreme Court in CIT vs Sri Amitabh Bachchan and has quashed the new issues in the said case.
- **The Honourable Bench of ITAT, Bangalore in the case of M/s. Poovayya & Co vs Pr. CIT in ITAT No.1217/Bang/2025 – Date of Order : 20-01-2026(Page No. 986 & 987 of Case Law Compilation No.5)** on the requirement of giving proper and specific opportunity, in para-26.16 of the said Order has observed as under:-

"26.16 In our considered view, such an approach is legally impermissible. It is a settled principle in law that the assessee must be put to notice of the exact reasons for which revisionary jurisdiction is sought to be exercised, and the final order under section 263 of the Act must be confined to those very reasons. The learned Commissioner cannot initiate proceedings on one set of reasons and ultimately revise the assessment on altogether different or expanded grounds, without giving the assessee a proper and specific opportunity to meet those grounds."

- At the time of hearing on 15-06-2026, the learned DR has stated that the appellant in its submissions dated 12-02-2025 in response to Notice u/s 263 of the Act dated 23-01-2025, the appellant has covered this new issue. The appellant submits that in response to said Notice, the appellant has made

detailed submissions on merits of two issues mentioned in the said Notice, namely (i) allowing of sales commission paid as deduction u/s 48(i) of the Act and (ii) proposal to tax the sale consideration as Income from Other Sources and on lack of jurisdiction to exercise revisionary powers u/s 263 of the Act based on the facts and circumstances of the case. To substantiate its view point that the Binnypet Land sold is capital asset, the appellant has brought to the notice of the learned Pr. CIT that in previous AYs 2015-16 and 2016-17, his predecessor has exercised his revisionary powers u/s 263 of the Act on the ground that JDA dated 28-03-2011 entered into by the assessee as a Landowner is adventure in the nature of trade and directed the AO to tax the income received from JDA under head Income from Business. In the appeals filed by the appellant against said Revision Orders, the Honourable Bench of ITAT, Bangalore vide its Order dated 2-09-2022 has held that the JDA is not adventure in the nature of trade, Binnypet Land contributed under JDA is capital asset and is taxable as income from Capital gains and not as Business income. The appellant was quite surprised to see the new issue encompassing majority of paras in relation thereto, in the Revision Order, when the same was received on 27-03-2025, despite the fact that the learned Pr. CIT was fully aware that ITAT has given its findings on same issue in favour of the appellant for previous AYs. Further, in the Revision Order, the learned Pr. CIT has not considered any of the detailed objections made by the appellant in its reply dated 12-02-2025 on all observations made by him in his Notice u/s 263 dated 23-01-2025 relating to Agreement of Sale without Possession dated 27-05-2019 and taxing of sale consideration under head Income from Other Sources.

- In the appellant's case, the learned Pr. CIT has not provided any opportunity of hearing to the appellant to file its objections on the new issue, which is included arbitrarily while passing the impugned Revision Order. The first opportunity of hearing as mentioned in the Notice issued u/s 263 dated 23-1-2025 on first two issues was afforded on 12-2-2025. On that day itself, the appellant had filed its detailed objections to the said two issues. The Revision Order was passed on 24-03-2025, i.e. after a gap

of 40 days. Therefore, it was imperative for the learned Pr. CIT to give an additional opportunity of hearing to the appellant and to file its objections, when he has decided to consider the new issue.

- During the fresh assessment proceedings pursuant to the order under section 263 of the Act, the learned AO of NeFAC has issued Notice u/s 142(1) dated 19-01-2026 raised queries pertaining to this particular new issue only (taxing sale consideration under head Income from Business). The said notice was silent on the issue regarding taxing the income under head Income from Other Sources and also on certain observations made by the learned Pr. CIT on sales commission paid to Consultant as given in paras 8,9 & 10 of the Revision Order, as originally envisaged by learned Pr. CIT in his Notice u/s. 236 dated 23-01-2025. The AO has taxed the impugned income under head Income from Business in place of LTCG vide fresh assessment order u/s 263 dated 25-03-2026 (Kindly refer to additional evidences filed by the appellant on 8-4-2026).
- In view of the foregoing facts, the appellant submits that learned Pr. CIT has failed to adhere to the principles of natural justice by not affording to the appellant to file its objections to the new issue before its inclusion in the impugned Revision Order dated 24-03-2025.
- **Since the learned Pr. CIT has not provided any opportunity of hearing to the appellant on the new issue before passing the Revision Order on 24-03-2025, the appellant is of the view that inclusion of said issue in the Revision Order is bad in law and request the Honourable Bench to quash the said revision order on this ground itself.**

3. **The learned DR stated that all the partners of the appellant Firm are companies engaged in real estate activities and the Binnypet Land contributed by one of the partner is stock-in-trade and not capital asset. (Kindly refer to Revised Grounds of Appeal Nos.16,17 &18)**

- The appellant submits that when the appellant Firm received the Binnypet Land as a capital contribution from a partner, it became the exclusive property of the appellant Firm under section 14 of Indian Partnership Act,1932 and it loses its previous characteristic as a specific asset of the

contributing partner. The contributing partner has no exclusive right to possess or use the said asset.

- **In this context, the appellant wish to refer to its submissions given in paras 19.4 and 19.5 at page nos. 51 & 52 of its Written Submissions filed on 24-02-2026 in support of the above view point.**
- In this regard, **t**he appellant further submits that the **Special Bench of Tribunal in the case of DLF Universal vs DCIT (2010) 123 ITD 0001 has held that though section 45(3) applies when a capital asset is introduced into a Firm as capital contribution, it will also apply when stock-in-trade is introduced into a Firm because the transaction is on the capital account and stock-in-trade does not retain its character as stock-in-trade at the point of time of introduction. The ITAT, Hyderabad in the case of Sai Teja Constructions vs Dy.CIT – Date of decision – 11-10-2023 has followed the said decision and upheld the order of the CIT (Appeals) on the above mentioned issue.**

4. **Learned DR pointed out that learned Pr.CIT in his Revision Order has held that JDA dated 28-03-2011 executed by the appellant in favour of the Developer is adventure in the nature. (Kindly refer to Revised Grounds of Appeal Nos.16,17 & 18)**

- The erstwhile JDA dated 28-03-2011 entered into by the appellant in favour of the Developer for contribution of Binnypet Land for residential development is not adventure in the nature of trade.

- **During AY 2020-21, the appellant has sold the balance undeveloped UDS available in Parkwest project directly to the above Developer and the lump sum consideration received from said sale was offered to tax as Long-term Capital gains in its ITR.**

- On this issue, the appellant in paras 20.1 to 20.3 (at page nos.60 & 61) of its Written Submission filed on 24-02-2026 has given submission that JDA is not adventure in the nature of trade. The Honourable Bench is requested to kindly consider the same.

- Further, the appellant's detailed objections against treating the JDA is adventure in the nature of trade by learned Pr. CIT in his previous Revision Orders for the AY 2015-16 and for the AY 2016-17 was considered by the Honourable Bench of ITAT, Bangalore vide Order dated 2-09-2022 and the same finds place in the said Order (under Paras Nos.5.1 to 5.20 of the said Order). The Honourable Bench has held that – ***"In view of the above, we are of the opinion that the assessee cannot be said to be carried on the adventure in the nature of trade in the impugned Land on entering into JDA dated 28-03-2011***" (at para no.7.19 of the said Order). The said judgement is annexed to Page nos. 1 to 73 of Case Law Compilation No.1.

5. Learned Pr. CIT's observation that Binnypet Land contributed by the appellant into JDA and sold under Agreement of Sale without Possession dated 27-05-2019 is not Capital asset but stock-in-trade .

- **The appellant submits that in paras 19.2, 19.3, 19.6,19.7 and 19.8 of its Written Submissions (at page nos.49 -55) filed on 24-02-2026, has given detailed submissions on the above mentioned issue. The appellant has furnished the year wise break up of Binnypet Land Cost and Capital Work-in-Progress appearing in its Balance-sheets and year wise break up of nature of Other expenses amounting to Rs.1,22,71,398/- debited to Capital Work-in-Progress during the period 1-7-2008 to 30-9-2011 (till the Land was contributed under JDA) in a tabular form and also the nature of said expenses, for kind consideration of the Honourable Tribunal.**

- **To substantiate the above mentioned facts, the appellant vide its affidavit for additional evidence dated 7-04-2026 has filed on 8-4-2026 copies of following documents filed before the Honourable Bench for kind consideration:-**

  i) Binnypet Land Ledger Account recording the receipt of Land contribution by the Partner into the Firm (Annexure-4 to Additional documents)

- **ii) Year-wise break up of Binnypet Land cost at Rs.4,34,61,326/- and Capital WIP including break up nature of other expenses of Rs.1,22,71,398/- debited to Capital WIP, as appearing in the Balance-sheets for FYs 2008-2009 to 2011-2012 (Annexure-5 to Additional documents)**

  iii) Copies of audited Financial Statements for FY 2008-2009 to FY 2013-14 reflecting the Binnypet Land and other expenses shown under Schedule – Capital WIP in the Balance-sheets as at 31st March respectively (Annexures-6 to 11 to Additional documents). These financial statements pertains prior to receipt of income from JDA by the appellant.

- **As stated above, the Honourable Bench of ITAT, Bangalore in its Order dated 2-09-2022 for AYs 2015-16 and 2016-17 has held that JDA is not adventure in the nature of trade, Binnypet Land is Capital asset and hence income received from JDA is taxable under head Capital gains and not under head Income from Business.**

6. Learned Pr. CIT observations in first part of para-17 of the Revision Order on few covenants contained in the JDA dated 28-3-2011 to prove that the appellant is not a mere Land owner but actively engaged in the development of Lands.

* In paras 19.9 (a) to (f) of the Written Submissions (at page nos.55-59) filed on 24-02-2026, the appellant has given detailed explanations/ clarifications on few covenants from JDA as pointed out by the learned Pr. CIT in para-17 of the Revision Order to prove that the appellant is not actively engaged in the development of Lands and Binnypet Land is not Stock-in-trade and is a Capital asset. The appellant requests the Honourable Bench to kindly consider the same.

* **The appellant submits that the observations given by the learned Pr. CIT in para-17 of the impugned order that the appellant has treated the Binnypet Land as stock-in-trade is incorrect and based on wrong assumption of facts. Further, in its every Balance-sheet, the said Land was shown as Fixed Asset/Capital WIP and the appellant has neither treated the said Land as stock-in-trade nor done any activities or improvement /development on said Land by itself.**

7. **In para-6 of the Revision Order, the learned Pr.CIT has observed that "*The assessee has also claimed certain business expenditure in the return of income which shows the intention of the assessee was to conduct business by entering into the Development Agreement dated 28-03-2011.*"**

- The appellant submits that in its ITR for AY 2020-21, the appellant has claimed General and Administrative expenses amounting to Rs.72,22,280/- as set off u/s 71(2) of the Act. When the learned AO has found that the appellant has neither carried out any business activities nor earned any income from business during AY 2020-21, like previous AYs, he has issued a show cause notice dated 17-09-2022 to the appellant to disallow the said General and Admin expenses (Page No.228-229 of Paper Book No.1). The appellant had filed its response dated 20-09-2022 (Page No.230-245 of Paper Book No.1) to the said show cause notice. In the said show cause notice, the learned AO has given the details of General and Admin expenses claimed by the appellant in its ITR. In the assessment order u/s 143(2) dated 29-09-2022, the learned AO has disallowed the said expenses of Rs.72,22,280/- on the ground of accounting principle matching concept.
- The appellant submits that from AYs 2015-16 to 2018-19 including AY 2020-21 it has claimed only General & Administrative expenses as set off u/s 71(2) of the I.T. Act in previous years, which were disallowed by learned AOs during scrutiny assessments on the ground that appellant has no business income and NIL business activities during the relevant previous years.
- All these General and Admin expenses are revenue in nature and are incurred to keep its legal existence alive, to maintain its establishment & to facilitate smooth conduct of its activities. The appellant has not incurred any business expenses pertaining to any business activities in any previous years.
- Therefore, the observations of the learned Pr. CIT that the appellant has claimed certain business expenditure in its Return of Income in previous years is factually incorrect.

Appellant's Response to Remand Report dated 12-06-2026 submitted by the learned DR before the Honourable Bench at the time of hearing on 15-06-2026.

8. Assumption of jurisdiction u/s 263 is valid and in accordance with Law as contended by learned jurisdictional AO.

* Learned JAO in his Remand Report has stated that the AO had failed to examine whether the income was assessable under the head "Capital Gains or Profits and Gains of Business or Profession. The learned Pr. CIT has recorded detailed reasons, examined the assessment records, considered the submissions of the assessee and therefore the assumption of jurisdiction under section 263 was valid and in accordance with law.

* The appellant in its response to Point No.1 hereinabove has made its detailed submissions on the above point for kind consideration of the Honourable Bench. In the Written Submission filed on 24-02-2026, vide paras 4 to 13 (at page nos.1-22) under heading Legal issues, the appellant has elaborately made submissions in support of its Revised Grounds of Appeal Nos.1 to 11 regarding learned Pr. CIT lacks revisionary powers to exercise jurisdiction under section 263 and the Revision Order dated 24-03-2025 is bad in law, for kind consideration of the Honourable Bench.

9. Revisionary proceedings initiated on basis of audit objections raised by the Revenue Audit Party (RAP).

- The appellant's learned Authorized Representative in the hearing held on 15-04-2026 made submission on the above issue. He has drawn the kind attention of the Honourable Bench to the additional documents filed on 8-04-2026, wherein the learned JAO has admitted the fact the RAP has raised few audit objections for AY 2020-21 in his reply dated 12-03-2026 to appellant's RTI application.
- In the Remand Report, the learned JAO has not categorically denied that the revisionary proceedings u/s 263 of the Act were not initiated based on audit objections.

- The appellant vide its letter dated 16-06-2026 has again requested the learned JAO to furnish copies of audit objections. The learned JAO in her reply dated 18-06-2026 informed that audit objection constitutes an internal communications exchanged between the Audit Party and Department and such documents are meant for administrative and supervisory purposes and are not intended for disclosure to the assessee. Copies of both letters are annexed here to for kind perusal of the Honourable Bench.
- The appellant humbly submits that if the said audit objections are not taken into consideration by the learned Pr. CIT while issuing the Notice u/s 263 dated 23-01-2026, then why the Revenue is reluctant to produce the copies of said objections before the Honourable Bench to contradict the additional grounds on audit objections raised by the appellant. The Honourable Supreme Court in its decision in case of Union of India vs Rai Singh Deb Singh Bist (1973) 88 ITR 200 (SC) (15-12-1972) when the Department failed to produce the report made by the ITO to the CBDT in the course of a writ petition, has observed that ***"No reason was given for not producing those records. These circumstances give rise to an adverse inference against the Department. We are constrained to come to the conclusion that the records in question were not produced because they did not assist the Department's case."***
- As regards two case laws submitted by the learned DR, in both cases, the learned AO has not made proper inquiries on the facts pointed out in the audit objections and hence due to lack of inquiry on those aspects, the Honourable High Court and ITAT has treated the audit objections valid so far as facts of the issues are concerned. However, the appellant is of the humble opinion that the Audit Party is refrained from giving any opinion on the legal and taxable implications based on the facts missed out by the learned AO. In the case of the appellant, there was detailed inquiries conducted by the learned AO before accepting the income as LTCG.

10. Learned JAO's objection to admissibility of additional documents submitted by the appellant under Rule 29 of the Income-tax Appellate Tribunal Rules,1963.

- Though the learned JAO is questioning the admissibility of additional documents submitted by the appellant on 8-04-2026, but the Revenue is admitting the fact that the appellant has shown the Binnypet Land as Capital asset under heading Fixed Asset/ Capital Work-in-Progress in its Balance-sheets every year and not as Stock-in-trade. The learned JAO has stated that "*the audited financial statements only evidence the accounting classification adopted by the assessee and do not override the factual findings arising from the JDA, development activities undertaken, revenue sharing arrangements and other attendant circumstances indicating commercial exploitation of the Land.*"
- The appellant submits that in paras -19,20 and 21 of the Written Submissions (at page nos.49 to 66) filed on 24-02-2026 before the Honourable Bench, the appellant has explained the facts of the appellant case in detail and merits of the observations made by the learned Pr.CIT in the Revision Order on the above issue. The appellant requests the Honourable Bench to kindly consider the said submissions of the appellant given in the Written Submissions dated 23-02-2026.

11. Honourable Karnataka High Court decision dated 13-9-2022 M/s. Embassy Brindavan Developers vs CIT (2022) 145 taxmann.com 527 (Karnataka) – (Case Law Compilation No.1 Page nos.104-109) and SLP filed by the Revenue before the Honourable Supreme Court was dismissed on 18-11-2024 (2024) 169 taxmann.com 137 (SC).

- **In support of the appellant's case, the appellant place reliance on Hon'ble Karnataka High Court in case of M/s. Embassy Brindavan Developers vs CIT wherein the Honourable High Court following the decision of Honourable Supreme Court in Malabar Industrial Company and the same Court decision in M/s. Cyber Park Development and Construction Ltd. (Case Law Compilation No.1 – Page -120-122) has held that when two plausible views are available and the Assessing Officer has taken one view, the jurisdiction under Section 263 of the IT Act cannot be exercised. The appellant submits that several facts of the said case is similar to that of**

appellant's case. In addition, in the appellant's case, the Honourable Bench of ITAT, Bangalore vide Order dated 2-09-2022 has held that the JDA is not adventure in the trade and Binnypet Land is Capital asset and income is taxable under head Capital gains, whereas in the above case, the ITAT has remanded the case to AO to decide the matter on merits.

- **Honourable Karnataka High Court in the above mentioned judgment dated 13-09-2022 has held that –**

i) The Court noted the fact that the Land was purchased with an intention to construct a Tech Park, but for paucity of funds, it could not be developed and the land was ultimately sold by the assessee.

(ii) No expenditure towards development of the Land was incurred by the assessee and the expenditure incurred is for interest, professional charges and brokerage.

(iii) The Court took note of the fact that the transaction was a solitary transaction and no development activity, whatsoever was made by the assessee.

(iv) The Court noted that in Taparia Tools Ltd, the Honourable SC has observed that it has been repeatedly held that the entries in the books account are not determinative or conclusive and the matter has to be examined on the touchstone of provisions contained in the Act.

iv) The Court came to the conclusion that Land was purchased and sold without any development no elaborate enquiry was required and AO has noted the facts required for the case and passed the assessment order.

v) The Court further held that in view of the authority in Malabar Industrial Company Ltd. and relying on the decision of same Court in Cyber Park Development & Constructions Ltd. merely because two plausible views are available and the AO has taken one view, the jurisdiction u/s 263 of the Act cannot be exercised. Court held that the invoking of section 263 in the facts and circumstances of the case was erroneous.

- **In the above context, the appellant requests the Honourable Bench to kindly to refer paras 10 to 16 of the said judgement, filed by the appellant in Case Law Compilation No.1 at page nos. 104-109.**

- **Further, the SLP filed by the Revenue against the aforementioned judgment was dismissed by Honourable Supreme Court on 18-11-2024 (2024) 169 taxmann.com 137 (SC).**
- **In the above context, the appellant wish to refer to the recent decision of ITAT, Bangalore in case of Mathikere Ramaiah Seetharam vs Dy. CIT in ITAT No.1286/Bang/2025 dated 28-11-2025, wherein the Honourable Bench in paras-4 and 5 of the said Order has concurred with the findings given by the learned CIT (A) that *"the assessee had consistently disclosed the Land as fixed asset in his balance-sheet and had never treated it as stock-in-trade. The learned CIT(A) has held that merely entering into a Joint Development Agreement does not convert a capital asset into stock-in-trade, nor does the sharing of revenue make the assessee a real estate developer."***

12.Additional submissions on the observations made by the learned Pr. CIT in later part of Para-17 of the Revision Order regarding taxing the sale consideration under head Income from Other Sources. (Revised Grounds of Appeal Nos. 12,14 & 15)

- In respect of the above mentioned observations of the learned Pr. CIT in para-17 of the Revision Order, and in support of its Revised Grounds of Appeal Nos.12, 14 & 15, the appellant in paras 16,17 and 18 of its Written Submissions dated 23-02-2026 (Page Nos. 30 to 48) has given elaborate submissions. The Honorable Bench is requested to kindly consider the said submissions of the appellant.
- In the said written submissions, the appellant has given explanations on following aspects:-

  (i) Reasons for not executing the Sale Deed in favour of the Developer/Purchaser for sale of undeveloped UDS of the Parkwest project on receipt of full sale consideration.

  (ii) Explanations on payment of inadequate stamp duty of Rs.20,000 on registered Agreement of Sale without Possession dated 27-5-2019, as the same has to be borne by the Purchaser and to save substantial stamp duty, the Purchaser has insisted to execute Agreement of Sale without Possession.

(iii) Purchaser and the appellant had received a Notice dated 23-12-2022 from District Registrar under section 46A of Karnataka Stamp Act,1957 for recovery of stamp duty short levied on said Agreement of Sale. The Developer has filed a writ petition before the Hon'ble Karnataka High Court challenging the validity of said recovery notice. In terms of then prevailing Article 5(e)(i) of Karnataka Stamp Schedule, in case of an **Agreement of Sale without possession attracts maximum stamp duty of Rs.20,000/-.** Whereas in Explanation-1 given therein **when a reference to Power of Attorney granted separately by the seller to the purchaser in respect of property which is subject matter of such agreement, then the possession of property is deemed to have been delivered and such agreement would attract stamp duty equivalent to a Conveyance Deed.** Copy of the relevant Article 5 (e) (i), (ii) and Explanation-1 is enclosed.

(iv) The appellant had received full sale consideration at the time of execution of registered Agreement of Sale on 20-06-2019 and hence appellant has no economic interest, benefits and income arising out of UDS sold to the Purchaser. It has extinguished all such rights in favour of the Purchaser.

(v) Agreement of Sale without Possession dated 27-5-2019 (registered on 20-6-2019) executed by the appellant (as a Seller) in favour of the Purchaser/Developer is comprehensive and far-reaching, conferring all rights, interests, economic benefits, entitlements, development rights, on said Undivided Share of Land (UDS) in favour of the Purchaser including the power to sell to any third party buyers as they may wish without seeking any consent from the assessee. As such, the Purchaser has become De-facto Beneficial Owner of the said UDS sold to them by the appellant with effect from date of said Agreement of Sale.

(vi) The registered Agreement of Sale without Possession dated 27.5.2019 is a comprehensive Agreement bestowing bundle of absolute rights and benefits in favour of the Purchaser for its enjoyment as an apparent/ beneficial owner of the Property sold by the appellant and not a mere contract of sale without transfer of ownership as observed by the learned Pr. CIT.

(vii) The Sellers is bound unconditionally to deliver and put the Purchaser or anyone claiming through the Purchaser, the legal possession of the UDS sold or any parts thereof on execution of Sale Deed and Sellers have no right to refuse/ withhold the legal possession. Physical custody of the Land (by way of License) is with the Purchaser since April,2011 onwards.

(viii) Unconditional right of conveyance granted in favour of the Purchaser or their Nominees together with Power of Attorney in favour of the Purchaser.

(ix) The Sellers (appellant) have conferred absolute rights in favour of the Purchaser, including extending the two Power of Attorneys already granted to the Purchaser to deal with the property agreed to be sold in any manner or part with possession of the same on behalf of the Sellers, as they think fit and proper.

(x) The Purchaser is entitled to nominate all their right, title and interest in the Property agreed to be sold or any parts thereof to any third party, including the buyers of the flats constructed therein without seeking any consent from the Sellers.

(xi)Right of Specific Performance of the Agreement of Sale is granted in favour of the Purchaser by the Sellers (appellant), but the Sellers have no right of specific performance.

(xii) The appellant had handed over all original/ certified copies of title and other related documents pertaining to Parkwest Project Land to the Purchaser on 20-6-2019.

(xiii) Learned Pr. CIT's contention that registered Agreement of Sale without possession dated 27-5-2019 executed by the assessee is merely a contract to sell without transfer of ownership is based on incorrect assumptions on the facts of the case and misinterpretation of the registered Agreement of Sale dated 27-5-2019.

(xiv) Appellant had relinquished and/ or extinguished all its rights, powers, benefits, economic interest, entitlements, development rights etc accruing on the Land(UDS) sold vide registered Agreement of Sale dated 27-5-2019 in favour of the Purchaser and consequently all its rights on said Land including the right of conveyance and specific performance of the said Agreement stand extinguished from the date of registration said Agreement of Sale on 20-6-2019. Hence the transaction regarding sale of Land effected through registered Agreement of Sale without Possession dated 27-5-2019 is squarely falls under sub-clauses (i), (ii) and (vi) of section 2(47) read with section- 269- UA(2)(f) (ii) of the I.T.Act,1961 and hence it is a transfer of capital asset within the meaning of said section and is therefore liable to tax under head Capital gains under section 45 of the IT Act and not taxable under head Income from Other Sources as opined by the learned Pr. CIT in his revision order.

(xv) The Agreement of Sale dated 27-5-2019 executed by the appellant in favour of the Purchaser for sale of said Land, falls under sub-clauses (i), (ii) & (vi) of section 2(47) of the IT Act read with section 269-UA (2)(f)(ii) of the Act and is transfer of a capital asset and said Land being a capital asset is liable to capital gains tax only.

(xvi) According to cardinal principle laid down by the Hon'ble Supreme Court in several cases, that the heads of income provided in various sections of the Income-tax Act are mutually exclusive and if the

income from a source falls within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

- **The appellant submits that during the course of fresh assessment proceedings under section 263 of the Act, pursuant to above directions given by the learned Pr. CIT in his Revision Order, no query was raised by the learned FAO of NeAFC in his Notice issued u/s 142(1) of the Act dated 19-01-2026 (copy of said Notice is enclosed). Further, taxing of sale consideration under head Income from Other Sources was not all considered by the learned FAO in the Fresh Assessment Order dated 25-03-2026 passed under section 263 of the Act in case of appellant. Copy of said assessment order dated 25-03-2026 has been submitted on 8-04-2026 as Additional Documents vide Annexure-12.**
- **Hon'ble Supreme Court, in several cases, held that " sale, exchange or relinquishment of asset or extinguishment of any rights therein" and or** any **transaction, which has the effect of transferring or enabling the enjoyment of any immovable property and de-facto transfer of immovable property** in **substance though title may not be transferred in law** are **transfer within the meaning section – 2 (47) of the Act and is liable to Capital gains.**
- **Honourable Bench is requested to kindly refer to the various decisions of Hon'ble Supreme Court, Karnataka High Court and other High Courts and ITATs listed out by the appellant in the above mentioned Written Submissions (at page nos.45-46) filed on 24-02-2026 in support of the appellant's contentions on the above mentioned Issue.**
- **The appellant submits that during the course of fresh assessment proceedings under section 263 of the Act, pursuant to above directions given by the learned Pr.CIT in his Revision Order, no query was raised by the learned FAO of NeAFC in his Notice issued u/s 142(1) of the Act dated 19-01-2026. Further, taxing of sale consideration under head Income from Other Sources was not all considered by the learned FAO in the Fresh Assessment Order dated 25-03-2026 passed under section 263 of the Act in case of appellant.**

The appellant prays this Hon'ble Tribunal to Consider the written submission in support of the revised grounds of appeal filed on 24.02.2026 along with this submission and allow the appeal filed by the appellant for the advancement of substantial cause of justice.

Place : Bengaluru
Date : 25-06-2026 **APPELLANT**

8.2 Further, the assessee has submitted the following written submissions in support of the revised grounds of appeal:

BEFORE THE HON'BLE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU 'A' BENCH, BANGALORE.

Name & Address of the Appellant	**M/s ETA Star Infopark** No. 501, 502, Front Wing, 5th Floor, North Block, Manipal Center, 120, Dickenson Road, Bengaluru 560042.
PAN	AACFE6010C
Assessment Year	2020-21
Order appealed against passed by	**Order under section 263 of the Income-tax Act, 1961 ("the Act") dated 24/03/2025) passed by learned Principal Commissioner of Income-tax, Bangalore-1, Bangalore.**
ITA No.	1194/BANG/2025

WRITTEN SUBMISSIONS IN SUPPORT OF THE REVISED GROUNDS OF APPEAL

1. Background of the appellant's case

(a) The appellant is a registered Partnership Firm constituted on 2.7.2008 The appellant is an investment Firm engaged mainly in making investments in shares of the Companies in the Group and holding the said investments on long-term basis to derive capital appreciation.

(b) Till today, the appellant has neither carried out any business activities including real estate business nor earned any income from business. Except Land at Binnypet (received as capital contribution from a Partner of the Firm), the appellant was not holding any other Land parcel and not carried out any development activities by itself on said Binnypet Land.

(c) Initially, the appellant together with another Landowner (a Partner of the Firm) had entered into a JDA dated 28-3-2011 with M/s. Relationship Properties Pvt. Ltd. (RPPL) and contributed the Binnypet Land measuring 42 acres into said JDA for development of a residential project (known as Parkwest) during a period of 8 years. The other Landowner had contributed Land measuring 5.04 acres into said JDA. Both Landowners together were entitled to 31% revenue share from Parkwest project, out of which, the appellant share was 26.323%.

(d) On account of inordinate delay in commencing the project by the Developer, pursuant to the terms of JDA dated 28-3-2011, the appellant had received revenue shares from JDA towards Land contribution during FYs 2014-15 to 2018-19 (AYs 2015-16 to 2019-20) and offered the said income as Long-term Capital gains (LTCG)in its ITRs and after conducting complete scrutiny (except for A Y 2019-20), the respective learned Assessing Officers (AO) had accepted the same in the assessment orders passed u/s 143(3) of the Act. During scrutiny assessments, on finding that the appellant had not carried out any business activity nor earned any income from business, the nominal General & Administrative expenses claimed as set off u/s 71(2) of the Act against LTCG and Interest Income by

the appellant was disallowed following the "Matching Principle" concept adopted in accounting principles.

(f) During AY 2020-21 (pertaining to this appeal), on account of considerable delay in executing the Parkwest project by the Developer (50% of the project was completed then), the appellant and other Landowner, after series of negotiations through a Consultant, had sold the undeveloped Undivided Share of Land (UDS) admeasuring 6,42,790.53 sq.ft in the said project (out of total extent of UDS of 14,71,405 sq.ft. for entire project) to the Developer/Purchaser directly against receipt of full sale consideration of Rs.560.03 Crores. The share of the appellant, being 84.91% works out to Rs.475.50 Crores.

(g) Since the full sale consideration was received, initially, the appellant had requested the Purchaser (Developer) to execute a Sale Deed for sale of undeveloped UDS to them. However, the Developer represented that they would be continuing with the development of the project for remaining 5 Towers and after development, they would be selling and conveying transfer of ownership on the constructed flats together with the proportionate UDS to the respective flat buyers based on the two Power of Attorneys conferred upon them earlier. Since the Sale Deed attracts substantial stamp duty, the Purchaser had insisted that the appellant should execute a comprehensive Agreement of Sale without Possession and extend the two Power of Attorneys granted to them earlier. The said Agreement of Sale without Possession would only attract a nominal stamp duty of Rs.20,000/- (as compared to Rs.34 Crores approximately in case of Sale Deed) at that time. Further, the entire project Land was under their custody in terms of License granted under previous JDA. Since the Purchaser is liable to pay the stamp duty, the appellant has acceded to their request. Subsequently, pursuant to audit objections raised by C&AG, the District Registrar, has issued a Notice dated 23-12-2022 for recovery of deficit in stamp duty to the Purchaser and copy endorsed to the appellant. The Purchaser has filed writ petition before Karnataka High Court on 27-1-2023 against said recovery notice and same is pending.

2. Assessment Proceedings for AY 2020-21 before NeAFC, Delhi

(a) The appellant had filed ITR for the impugned assessment year 2020-21 on 07.01.2021 declaring total income of Rs.469.57 Crores (consisting of LTCG of Rs.460.69 Crores and interest income of Rs.9.60 Crores). **(Page No.144-210 of Paper Book No.1).**

(b) The ITR filed by the appellant was selected for complete scrutiny by Assessment Unit of NFAC, Delhi vide its Notice u/s 143(2) of the Act dated 29.06.2021 **(Page No.97-98 of Paper Book No.1)**

(c) The learned Assessing Officer had issued notice under section 142(1) of the Act dated 06.12.2021 **(Page No.99-101 of Paper book No.1)** calling for the appellant to file response. The learned Assessing Officer issued another notice under section 142(1) of the Act dated 03.08.2022 raising several queries **(Page no. 109 to 114 of Paper Book No.1)**

(d) The appellant had filed responses dated **16.12.2021 (Page No.102-108 of Paper Book No.1)19.08.2022 (Page Nos,121 to 143 of Paper Book No.1)** and **14.09.2022 (Page No.222-224 of Paper Book No.1)**. .

(f) The learned Assessing Officer issued show cause notice dated 17.09.2022 to the appellant to disallow the General and Administrative expenses of Rs.72,72,280/- claimed as set off u/s 71(2) of the Act **(Page No.228-229 of Paperbook No.1)**. The appellant filed response dated 20.09.2022 **(Page No.230-245 of Paperbook No.1)** to the said show cause notice.

(g) The learned Assessing Officer passed assessment order dated 29.09.2022 **(Page no.42-47 of Appeal Memo)** accepting the LTCG and interest income declared in the ITR and disallowed the General and Administrative expenses of Rs.72,22,280/- on the ground that the appellant

had neither carried out any business activity nor earned any income from business during the AY

3. Revision Proceedings u/s 263 of Act for AY 2020-21 before learned Pr. CIT

(a) Subsequently, based on audit objections, the learned Principal Commissioner of Income Tax, (Pr. CIT), Banglore-1 had issued a Notice dated 23-1-2025 under section 263 of the Act **(Page no.48-50 of Appeal Memo).**

(b) The appellant filed response dated 12.02.2025 **(Page no.51-110 of Appeal Memo)** with detailed objections to the proposed revision under section 263 of the Act on the issues mentioned in the said notice. The appellant in the said response explained in detail the facts of appellant's case on merits, lack of jurisdiction under section 263 of the Act, cited various case laws supporting the merits of the case and on jurisdictional issues.

(c) The learned Principal Commissioner of Income-tax, without appreciating the response dated 12.02.2025, the merits of the objections raised and the annexures enclosed to the said objections, passed a revision order dated 24.03.2025 under section 263 of the Act **(Page no.29-41 of Appeal Memo)**has set aside the assessment order and directed the *Assessing Officer to pass fresh order after carrying out the necessary verification and examination regarding treatment of income arising in view of "Agreement of Sale Without Possession" executed on 27-05-2019.***While passing the said revision order, the learned Principal Commissioner of Income-tax has added one more issue regarding taxing of the sale consideration under head Income from Business for which no opportunity was provided to the appellant to file its objections to the said Issue.**

4. Issues contested in this appeal by the appellant

In this appeal, the appellant is contesting following issues**(under broad heading 'Legal Issues' and 'Merits of the Issues' separately)** for kind consideration of this Hon'ble Tribunal :-

A. Legal Issues contested in this appeal

Issue No.1 : Grounds on invoking the provisions of section 263 of the Act by the learned Pr.CIT-1, Bangalore are without jurisdiction. (Kindly refer Revised Grounds of Appeal Nos. 1 to 8).

Issue No. 2 : Order passed under section 263 of the Act is bad in law. (Kindly refer Revised Grounds of Appeal Nos. 9 to 11)

Issue No.3 : Grounds on Order passed under section 263 of the Act is in violation of principles of Natural Justice (Kindly refer Revised Grounds of Appeal Nos.19 & 20).

B. On Merits of the Issues contested in this appeal

Issue No.4 : Merits on learned Pr.CIT's observations that the learned AO has not conducted detailed inquiry and proper verification in respect of sale commission of Rs.11,22,17,066/- paid to a Consultant, M/s. BHN Foods and hence the action of learned AO allowing the claim of appellant as deduction under section 48(i) of the Act from LTCG is erroneous (Kindly refer Revised Grounds of Appeal No.13).

Issue No.5 : Merits on Learned Pr. CIT's opinion in holding that the registered Agreement of Sale without Possession dated 27-5-2019 did not constitute a valid "transfer" under section 2(47) of the Act and hence the full sale consideration received is not taxable under head "Capital gains" but same is taxable under head 'Income from Other Sources'. (Kindly refer Revised Grounds of Appeal Nos.12, 14 and 15)

Issue No.6 : Merits on Learned Pr. CIT's alternative opinion holding that the impugned income received from sale of undeveloped Land/UDS vide registered Agreement of Sale without Possession dated 27-5-2019 is taxable under head 'Income from Business' instead of 'Capital gains' on the ground that the Binnypet Land/UDS sold is stock-in-trade and the JDA dated 28-3-2011 entered into with the Purchaser/Developer previously on said Land is adventure in nature of trade. (Kindy refer Revised Grounds of Appeal Nos. 16,17 & 18)

Issue No.7 : Additional Grounds of Appeal – Audit Objections cannot be a basis of revision of assessment orders under section 263 of the Act.

A. Legal Issues contested in this appeal

Issue No.1 : Grounds on invoking the provisions of section 263 of the Act by the learned Pr.CIT-1, Bangalore are without jurisdiction (Kindly refer Revised Grounds of Appeal Nos. 1 to 8).

4.1 Appellant case for AY 2020-21 was selected for complete scrutiny

Appellant case was selected for complete scrutiny vide Notice u/s 143(2) of the Act dated 29-6-2021 by Assessment Unit of NFAC, Delhi. Thereafter, two Notices u/s 142(1) dated 6-12-2021 and 3-8-2022were issued calling for exhaustive details on several issues mentioned in the said Notices.In response to said notices, the appellant had furnished all the details as asked for, vide its responses dated **16.12.2021, 19.08.2022 and 14.09.2022**.

4.2 Query was raised on nature of business activity carried out and sources of income earned with description of expenses incurred and to provide copies of ITR, audited financial statements, etc.

i) In the Notice u/s 142(1) dated 3-8-2022, the first query was providing a detailed note on the nature of business activity carried out, different

sources of income earned with the description of expenses incurred during the year.

ii) Second query was providing copies of the ITR, Audited Financial Statements with all Annexures and Notes to Account, audit report and computation of income.

iii) In its response dated 19-8-2022, the appellant had submitted its replies to both queries, explained the sources of income earned with description of direct and indirect expenses incurred during the year. The appellant also furnished copies of ITR, audited financial statements and computation of income.

4.3 Queries were raised and details were provided to learned AO on Long-term Capital Gains pertaining to sale consideration received from sale of Undivided Share of Land (UDS) directly to the Developer/Purchaser vide registered Agreement of Sale dated 27-5-2019

i) The Assessment Unit of NFAC (hereinafter referred to 'learned AO') in the notice under section 142(1) of the Act dated 03.08.2022, vide queries Nos.5, 6, 7.a) & b), 8.a) to 8.e) (Page No. 109 to 114 of Paper Book No.1) had raised queries pertaining to the issues raised in the notice under section 263 of the Act dated 23.01.2025, which were replied to by the appellant vide its response dated 19.08.2022.(Page No. 121 to 143 of Paper Book No.1).

ii) During the scrutiny proceedings, detailed inquiries were made by learned FAO on LTCG relating to income received on sale of UDS to the Purchaser/Developer vide registered Agreement of Sale without Possession dated 27-5-2019. The appellant had submitted all the details as sought by the learned AO in response to their Queries Nos.7 &8.a) to e) in the Notice dated 3-8-2022. The learned AO had verified the details and explanations given and documents submitted by the appellant including the registered Agreement of Sale and came to the conclusion that the income received from sale of UDS to the Purchaser/Developer pursuant to said Agreement of Sale without Possession is Capital gains and hence accepted the LTCG offered by the appellant in its ITR.

iii) **The appellant therefore submits that the observation in the impugned order under section 263 of the Act that "*Assessing Officer had not examined the issue of treatment of sale consideration of impugned Land as business income / income from other sources or capital gains*" is factually incorrect and without any basis and tantamount to ordering for making fishing and roving enquiries.**

5.1 Queries were raised on sales commission paid and details were furnished.

i) Queries were raised and details were furnished to learned AOin respect of Sales Commissioner of Rs.11,22,17,066/- paid to M/s. BHN Foods, which is claimed as deduction u/s 48(i) of the Act from Long-term Capital gains in the ITR.
ii) In para-14 of revision order (Page No.35 of Appeal Memo), the learned Pr. CIT has accepted that during the assessment proceedings, the appellant has furnished leger extracts and bank account statements relating to payment of sales commission of Rs.11,22,17,066/- paid to M/s BHN Foods.
iii) The learned AO in the Notice dated 03.08.2022 has raised the queries vide query Nos. 5 and 6 (Page No.109 to 114 of Paper Book No.1) on all the expenses (direct or indirect) debited to the Income and Expenditure Account, which includes the sales commission paid by the appellant to M/s. BHN Foods. iv) In response to above queries No.s5 and 6, the appellant had submitted following documents to learned AO in respect of Sales Commission paid :-

i) Details of Party-wise expenses incurred exceeding Rs.5 Lakhs during FY 2019-2020.**(Page No. 7 to 8 of Paper Book No.1)**
ii) Ledger Account of M/s. BHN Foods, wherein the payment of sales commission through HDFC Bank Account on 5-7-2019 and debiting of brokerage expenses on 22-7-2019 on receipt of Tax Invoice from BHN Foods are reflected. **(Page No.9 to 10 of Paper Book No.1)**

iii) Detailed statement showing the particulars of TDS deducted on expenses debited to Income & Expenditure Account together with an explanation that sales commission of Rs.11,22,17,066 (with GST) paid to M/s. BHN Foods (Consultant) for sale of UDS in Parkwest project at Binnypet is included in Cost of Acquisition in Schedule-11 – Income from Long-term Capital gains and claimed the same as part of cost of acquisition against LTCG in the ITR/Computation of Total Income. **(Page No.11 to 13 of Paper Book No.1)**

iv) Copy of relevant Bank Account statement for July,2019 in respect of current account no.502000005793626 with HDFC Bank Ltd. was submitted to learned AO (vide its response dated 16-12-2021 to Notice u/s 142(1) dated 6-12-2021 referred to above) wherein the payment of sale commission to M/s. BHN Foods is appearing. **(Page No. 14 of Paper Book No.1)**.

v) Learned AO has verified the bona fide of the sales commission paid from the details as called for and submitted (including Bank payment details) during the assessment proceedings.

5.2 Allowing the deduction of sales commission expenditure by learned AO after due verification of details and documents submitted is not erroneous as observed by the learned Pr. CIT.

i) Accounting of sales commission expenditure incurred by the appellant is not through journal entry and but on actual payment made to M/s. BHN Foods through Bank Account on 06.07.2019 after deducting applicable TDS thereon.

ii) The appellant had furnished all the details, as called for, pertaining to sales commission paid to M/s. BHN Foods including Bank payment details as well as the **justification for the said payment,** vide its response dated 19.08.2022 **(Page No.121 to 143 of Paper Book No.1)**

iii) Learned AO had verified the genuineness and necessity of the said expenditure and found the same in order.

iv) Learned AO had allowed the said expenditure as deduction under section 48(i) of the Act, on satisfying that the same was incurred wholly and exclusively for earning the Long-term Capital gains by the appellant.

v) Therefore, the learned Pr.CIT's observations that allowing the sales commission paid as expenditure without verification of same by the learned Assessing Officer is factually incorrect and is not erroneous.

6. Adequate and proper inquiries have been made by learned AO and examined the records of the appellant in right perspective

6.1 Learned AO has conducted detailed inquiry and came to the conclusion that the income received from sale of UDS is Capital gains and allowed the deduction of sales commission from LTCG and also ascertained that the appellant has not carried out any business activities.

i) From the foregoing facts of the appellant's case, it is clear that the learned Assessing Officer has examined the records of the appellant in right perspective and has done proper and adequate inquiries on the nature of activities carried out by the appellant during assessment year 2020-21.

ii) The learned AO applied his mind in reaching a conclusion that the appellant has not done any business activity and not derived any income from business.

iii) The learned Assessing Officer has passed the assessment order after diligently carrying out the scrutiny proceedings and hence there is no reason to assail the same on the pretext of non-application of mind.

iv) The appellant submits that once it appears that the AO has conducted the enquiry on the issues on which learned Pr. CIT seeks to exercise jurisdiction u/s 263 of the Act, then the learned Pr. CIT must record conclusive findings or error and prejudice and cannot remit back the issues for a further inquiry or fresh consideration.

iii) Since the appellant does not exercise any control over the drafting of the assessment order, therefore, the record of the assessment must be seen in its entirety to determine whether any enquiry was made or not.

6.2Hon'ble Supreme Court its decision dated 4-4-2025 in case of PCIT vs M/s. V.Con Integrated Solutions Pvt. Ltd. – CIT can exercise power u/s 263 by making an addition and not by way of remand.

The appellant submits that the Hon'ble Supreme Court in the case of PCIT vs M/s.V-CON Integrated Solutions Pvt. Ltd., SLP (Civil) Diary No.13205/2025 dated 04.04.2025 (Page No.98 to 99 of Case Law Compilation No.1) held that –

"i) The assessee does not have control over the pen of the AO. Once the AO carries out the investigation, but does not make any addition, it can be taken that he accepts the plea and stand of the assessee.
ii) The power under section 263 can be exercised by the Commissioner of Income-tax, but by going into the merits and making an addition, and not by way of remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/ conclusion can be corrected by CIT with a decision on merits and by making an addition or disallowance.
iii) There may be cases where the AO undertakes a superficial and random investigation that may justify a remit, albeit the CIT must record the abject failure and lapse on the part of AO to establish both the error and the prejudice caused to the Revenue."

6.3 Observations of learned Pr.CIT observations in Para-19 of the revision order invoking clause (a) to Explanation-2 of section 263 is based on unfounded grounds.

In view of the foregoing facts of the appellant's case, it is submitted that the learned Pr.CIT's observations in para-19 of the revision order invoking clause (a) to Explanation-2 of Section 263 of the Act appears to be incorrect and without any basis and tantamount to ordering for making fishing and roving enquiries.

7.1 Difference of opinion does not grant power to exercise revisionary powers u/s 263 of the Act

i) In the notice u/s 142(1) dated 03.08.2022**(Page No. 109 to 114 of Paper Book No.1)**, queries (Nos.7 and 8.a) to 8.e) relating to Long-term Capital gains in respect of income received on sale of UDS to Purchaser/ Developer vide registered Agreement of Sale dated 27-5-2019 were raised. (Page Nos.17 to 47 of Paper Book No.1). The appellant had submitted all details as sought vide its response dated 19-8-2022**(Page No. 121 to 143 of Paper Book No.1)** .

ii) On examination/ verification of records and other details submitted by the appellant during assessment proceeds, the learned AO has concluded that the income received from sale of UDS pursuant to registered Agreement of Sale without possession dated 27-5-2019 is taxable under heading LTCG.

iii) However, just because the findings as arrived by the learned AO is at a variation of the opinion of the learned Pr.CIT, would not grant him, the powers to exercise revision u/s 263 of the Act.

7.2 Learned Pr.CIT's direction of setting aside the assessment order amounts to change of opinion, which is not sustainable in law.

i) The observations, findings and directions given in the impugned revision order u/s 263 dated 24-3-2024 amounts to change of opinion, which is outside the ambit of an erroneous order.

ii) A revision order under Section 263 of the Income Tax Act **cannot be based on a mere change of opinion** by the Commissioner if the Assessing Officer has already conducted a proper inquiry and taken a plausible view in the original assessment.

iii) It is a well settled principle of law in order to invoke, the provisions of section 263 of the Act, **twin condition embedded in said provision, i.e. the assessment order is erroneous and it is prejudicial to the interest of the Revenue are to be satisfied cumulative.**

iv) Revisionary powers of the Commissioner under Section 263 are supervisory and not intended to substitute the Commissioner's

judgment for that of the AO, provided the AO's decision was made after due application of mind and inquiry.

v) **If the AO has made a proper inquiry, examined the accounts and relevant evidence, and taken a plausible view in law, the Commissioner cannot revise the order simply because he disagrees with that view or feel a more detailed inquiry could have been made.**

vi) This is considered a "change of opinion" and is not a valid ground for invoking Section 263.

7.3 When the learned AO has taken one of the plausible view which is legally permissible and the learned Pr.CIT does not agree to the same due to difference of opinion, which results in a loss of revenue, it cannot be treated as an erroneous order.

i) It is well settled that the learned AO has taken one of the plausible views based on the facts of the case, i.e. the income received from sale of UDS by the appellant is taxable under LTCG, which is legally permissible. Then the learned Pr.CIT does not agree to the same due to difference of opinion and hence, he cannot subscribe or impose his different view and treat the assessment order as erroneous and prejudicial to the interests of the Revenue.

ii) During the assessment proceedings, the appellant had furnished a copy of the Order dated 2-9-2022 of Hon'ble ITAT, Bangalore for AYs 2015-16 and 2016-17 passed in the case of the appellant. (Page No.01-73 of Case Law Compilation No.1).

iii) In the said Order, the Hon'ble ITAT has held that Binnypet Land contributed by the appellant to JDA dated 28-03-2011 is capital asset and income received said JDA is taxable under head Capital gains.

iv) Taking cognizant of the above findings of the Hon'ble ITAT, the view taken by the learned AO that income from sale of undeveloped UDS in the said Binnypet Land is taxable as LTCG is a plausible view.

v) Therefore, the learned Pr.CIT is not legally permissible in passing the impugned revision order, when there are two plausible views on the said issue.

8.1Learned Pr.CIT' observations in para-10 of the revision order (Page No. 29 to 49 of Appeal Memo) for invoking clause (a) to Explanation-2 to Section 263 is based on unfounded grounds and untenable in law.

i) The learned Pr.CIT's observationsthat learned AO has not done proper and adequate inquiry during the scrutiny proceedings and hence the assessment order dated 28.09.2022 is erroneous pursuant to sub-clause (a) to Explanation-2 to Section 263(1) of the Act is based on unfounded grounds and untenable in law.

ii) The Clause (a) of Explanation-2 to Section 263 of the Act or any other conditions laid down in Explanation 2 does not warrant recording the said enquiry or verification in its entirety in the assessment order.

iii) The assessment order may not necessarily reflect everything that the learned Assessing Officer asks for but that cannot lead to the conclusion that the issue has not been raised or examined.

v) The provisions of the Income-tax Act do not envisage recording of each and every finding in the assessment order, however, the same cannot lead to a far-fetched conclusion that no enquiry has been conducted per se the issues has not been properly elucidated in the assessment order.

8.2 Proper and adequate inquiry was done during scrutiny proceedings by learned Assessing Officer

The appellant submits that from the above mentioned queries raised by learned AO in their Notices under section 142(1) dated 03.08.2022 **(Page No. 109 to 114 of Paper Book No.1)** and the explanations given by the appellant to said queries, it emerges that the learned Pr.CIT erred in holding that the learned AO has not examined the issue of treatment of sale consideration received either as Business income or Income from Other sources instead of Capital gains, thus rendering the assessment order is erroneous.

8.3 Learned CIT cannot impose his own understanding of the extent of inquiry

i) As far as adequacy of inquiry is concerned, there is no law which provides the extent of inquiries to be made by the Assessing Officer.

ii) It is Assessing Officer's prerogative to make inquiry to the extent he feels proper.

iii) The Pr.CIT by invoking revisionary powers under section 263 cannot impose his own understanding of the extent of inquiry.

iv) Thus, in the case of the appellant, when the learned AO had made detailed enquiries and verifications on facts of the case, the learned Pr.CIT was not justified in law in setting aside the assessment order, directing the AO to carry out further verification and examination to ascertain whether said income falls either under head Income from other sources or under head Income from Business.

9.1 Directions given by learned Pr.CIT amounts to ordering for making fishing and roving enquiries.

i) The observations made in para-19 of the impugned revision order **(Page No.29-41 of Appeal Memo)** that "***the Assessing Officer had not examined the issue of treatment of sale consideration of impugned Land as business income/ income from other sources or capital gains and thus rendering the impugned assessment order dated 29-09-2022 as erroneous in so far as it is prejudicial to the interest of the Revenue for the below reason..***" amounts to ordering for making fishing and roving enquiries.

ii) It is evident from the above observations that the learned Pr.CIT has not given any specific direction to the learned AO under which head the said income is taxable, whether under the head income from business or income from other sources or as capital gains.

9.2 Condition regarding "erroneous" is not satisfied in the appellant's case.

The appellant submits that its case cannot treated as "**of no inquiry and the condition regarding "erroneous is not satisfied"** on following reasons:-

i) In the revision order, the learned Pr.CIT has directed learned AO, to carry out again necessary verification and examination regarding treatment of said income and then to find out and decide afresh under which head the said income is correctly taxable and then to pass a fresh assessment order under section 263 of the Act.

ii) The learned AO had passed the assessment order after making adequate inquiry and after having examined the replies of the appellant with due application of mind and hence it is not the case where no inquiry was made.

iii) From the aforesaid inconclusive findings and directions given by the learned Pr.CIT clearly establishes that he could not satisfy himself about the correct head under which the said income is taxable and hence he is unable to determine whether the impugned assessment order is erroneous or not?

iv) Therefore, the first condition regarding the term "erroneous" has not been satisfied in the appellant's case.

v) The inconclusive/ indecisive directions given by learned Pr.CIT to AO to make fresh assessment after conducting further investigations on different viewpoints, amounts to ordering for making fishing and roving enquiries.

vi) Consequently the impugned revision order is bad in law and is liable to be cancelled.

10.1 Learned Pr.CIT is required to show that the view taken by the AO is wholly unsustainable in law and also to establish that no inquiry was conducted by AO while accepting the same.

i) In the present case, the learned Pr.CIT is expected to show that the view taken by the learned FAO on accepting the income from sale of UDS offered as LTCG, after conducting detailed inquiry is wholly unsustainable in law before embarking upon the exercise of revisionary powers.

ii) The revisionary powers cannot be exercised for directing fuller inquiry to merely find out the view taken by the learned AO after detailed inquiry in the present case, is erroneous.

iii) If such course of action as interpreted by the learned Pr.CIT in the light of the Explanation-2 is permitted, the learned Pr.CIT can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that the assessment order dated 29-9-2022 passed by the learned AO in the present case is not sustainable in law.

iv) It is only in a very gross case of inadequacy in inquiry or where no inquiry is conducted, the revisionary power so conferred u/s 263 of the Act can be exercised to invalidate the action of AO.

v) Therefore, learned Pr.CIT has grossly erred in setting aside the assessment order passed without appreciating the fact that there is no error, much less prejudicial to the interests of the Revenue. .

10.2Case Laws relied upon by learned Pr.CIT in the revision order for invoking the provisions section 263 of the Act is distinct from the facts of the case of the appellant. But not invoked clause (d) to Explanation-2 of Section 263 in the para- 19 of the revision order.

In para-20 the impugned revision order, the learned Pr.CIT has relied upon following two case laws in support of his invoking the provisions of section 263 of the Act in a case where the AO has not made proper inquiry while making the assessment. **But the learned Pr.CIT has not marked clause (d) to Explanation-2 of Section-263 of the Act in para-19 of the impugned revision order.**

(1) M/s. Daniel Merchants Pvt. Ltd. vs Income-tax Officer – (2018) 95 taxmann.com 366 (SC) dated 29-11-2017.

i) In case of M/s. Daniel Merchants Pvt. vs ITO, the Supreme Court upheld the order of Calcutta High Court, wherein the High Court had confirmed the revision order of the CIT directing the AO to carry thorough and detailed inquiry on receipt of share application money by the assessee

as the same relates to raising of bogus share capital and dismissed the SLP filed by the assessee.

The views taken by the AO in the assessment order was unsustainable in law.

ii) With due respects to hon'ble Supreme Court and Calcutta High Court, it is submitted that the decisions in case of M/s. Daniel Merchants Pvt. Ltd. vs ITO dated 29-11-2017 relied upon by the learned Pr.CIT is distinguishable with the facts and circumstances of the appellant's case and also differs on law points.

(2) Commissioner of Income-tax vs Paville Projects Pvt. Ltd. – (2023) 149 taxmann.com 15 (SC) dated 6-4-2023

i) In the above case, the assessee company sold "Paville House" absolutely owned by it to discharge encumbrances from the sale proceeds arising out of a family settlement to pay off the shareholders.

ii) The said assessee claimed the said discharge of encumbrance as cost of improvement against the long-term capital gains on sale of the said House. The AO accepted the said claim.

iii) Therefore, the CIT has invoked the revision proceedings u/s 263 to disallow the said claim on the ground that it did not fall under the definition of cost of improvement contained in section 55(1)(b) of the IT Act.

iv) However, the ITAT and High Court upheld the assessee's claim of deduction of payment made to the shareholders and held that the CIT has wrongly invoked powers under section 263 of the Act.

v) In the above context, the Supreme Court has held that *"Applying the law laid down by this Court in the case of Malabar Industrial Co. Ltd. to the facts of the case on hand and even as observed by the Commissioner, the order passed by the Assessing Officer is erroneous as well as prejudicial to the interest of the Revenue"*

vi) However, in appellant's case, on facts and in law as explained herein above, the view taken by the learned AO after due verification of records, that is, the income offered by the appellant from sale of land is assessable under head Long-term Capital gains, which is one of the legally permissible

view under the IT Act and hence one of the condition regarding erroneous is not satisfied.

v) Therefore, with due respect to Hon'ble Suprem Court, it is submitted that the above mentioned case is distinct from the appellant case on facts and in law.

Issue No.2 : Order passed under section 263 of the Act is bad in law (Kindly refer Revised Grounds of Appeal Nos. 9 to 11)

11.1 Learned Pr.CIT is not sure about the head under which the impugned income is taxable – whether under Income from Business or Other Sources?

i) The learned Assessing Officer after conducting detailed during the assessment proceeding for AY 2020-21 arrived at a definite conclusion that the income from sale of land/ UDS is taxable under the head Capital gains.

ii) On the other hand, the learned Pr.CIT is not sure whether income from sale of UDS is taxable under head Income from Business or Income from Other Sources or is it Capital gains?

iii) In some paras of the revision order, by interpreting few clauses of erstwhile JDA dated 28-3-2011, he is of the opinion that undeveloped UDS sold directly to the Developer is taxable under head Income from Business.

iv) Whereas by interpreting few clauses in the registered Agreement of Sale without Possession dated 27-5-2019, he is of the opinion that the impugned income is taxable under head Income from Other Sources..

11.2 Learned Pr.CIT has given inconclusive directions to AO while setting aside the assessment order and failed to determine whether assessment order is erroneous or not?

i) In the revision Order, the learned Pr.CIT has not given any specific direction to AO under which head the said income is taxable - Whether as Income from Business or Income from Other Sources or as Capital gains?

ii) According to his directions, the learned AO has to carry out again necessary verification and examination regarding treatment of said income and to find out and to decide afresh under which head the said income is correctly taxable and then to pass a fresh assessment order u/s 263 of the Act.

iii) From the above inconclusive findings and directions given by learned Pr.CIT, it is very clear that he is unable to determine whether theassessment order is erroneous or not?

iv) Therefore, his aforesaid inconclusive directions to AO to conduct further investigations, tantamount to making fishing and roving enquiries, Hence, the appellant is of the view that impugned revision order is bad in law and is liable to be cancelled.

12. Primary intention to invoking the section 263 to tax the impugned income to higher rate of tax, which does not constitute a valid ground for treating assessment order as erroneous.

i) The appellant has declared a Net Long-term Capital gains of Rs.460.70 Crores and interest income of Rs.9.60 Crores in the ITR for AY 2020-21 **(Page No.144-210 of Paperbook No.1)** and has paid a total tax of Rs.115.87 Crores (including TDS) as on 31st March, 2020.

ii) The appellant is of the view that considering the significant amount of Capital gains declared and based on the audit objections raised by Revenue Audit Party, the learned Pr.CIT has initiated the revision proceedings by issuing Notice u/s 263 of the Act dated 23.01.2025 **(Page No.48-50 of Appeal Memo)** to tax the impugned income under head Income from Other Sourcesat a higher rate of 30% (short levy of tax is estimated by learned Pr.CITat Rs.71.39 Crores) in place of LTCG, which is taxed at lower rate of 20%.

iii)In the case of appellant for AYs 2015-16 and 2016-17, the learned Pr.CIT-1, Bangalore had passed revision orders u/s 263 of the Act dated 18-3-2020 and 30-3-2021 holding that the JDA dated 28-3-2011 contributing Binnypet Land by the appellant is adventure in the nature of

trade and income received from said JDA is taxable under head Income from Business instead of LTCG.

iv) In the appeals filed by the appellant before the ITAT, Bangalore against the aforementioned revision orders, this Hon'ble Tribunal vide its Order dated 2-09-2022 **(Page No.01-73 of Case Law Compilation No.1)** has held that the BinnypetLand contributed under JDA is capital asset and income received from said JDA is long term capital gains and not Business Income.

v) The Department has filed appeals before Hon'ble High Court of Karnataka against the above Order of the Tribunal and said appeals are pending.

vi) The appellant is of the view that keeping in view of the above appeals filed by the Department before Hon'ble High Court, the learned Pr.CIT, on afterthought, has included the above issue regarding taxing of income from sale of UDS under head Income from Business in place of LTCG in the impugned revision order dated 24-3-2025. This view is reinforced by the fact that this particular issue was not at all raised by the learned Pr.CIT in his show cause notice issued u/s 263 dated 23-1-2025 on the basis of audit objections **(Page No.48-50 of Appeal Memo)**.

vii) Therefore, with a view to tax the income from sale of UDS at a higher rate, the learned Pr.CIT has included both issues simultaneously in the impugned revision order in several paras, i.e. to tax the said income either under the head Income from Business or Income from Other Sources, despite being fully aware that in the case of the appellant, Hon'ble ITAT, Bangalore has held that Binnypet Land is Capital asset and income received from JDA is LTCG and not Business Income.

viii) In view of the above facts, it is obvious that the primary intention of invoking of provisions of section 263 of the Act in the present case is to tax the impugned income at a higher rate under any one of the head (business income or income from other sources). Hence, the said intentiondoes not constitute a valid ground for treating the assessment order as erroneous and prejudicial to the interest of Revenue.

13. Case Laws relied upon by the appellant in support of its above contention that the Pr.CIT lacks jurisdiction to exercise revisionary powers under section 263 of the Act and also the impugned revision order dated 24-3-2025 is bad in law and is liable to be cancelled.

The appellant places reliance on the following decisions in support of the case of the appellant:

(a) Case laws decided by Hon'ble Supreme Court

(1) Malabar Industrial Company Ltd. vs CIT, (2000) 109 Taxman 66 (SC) (Page No.74-78 of Case Law Compilation No.1)

(2) CIT vs Max India Ltd, (2008) 166 Taxman 188 (SC) (Page No.79-81 of Case Law Compilation No.1)

(3) PCIT vs Shreeji Prints Pvt. Ltd., (2021) 130 taxmann.com 294 (SC) and High Court decision (2021) 130 taxmann.com 293 (Guj) (Page No.82-87 of Case Law Compilation No.1)

(4) CIT vs Nirav Modi, (2017) 77 taxmann.com 15 (Page No.88-95 of Case Law Compilation No.1)

(5) Pr.Commissioner of Income-tax-1, Chandigarh vs M/s. V-CON Integrated Solutions Pvt. Ltd., SLP(C) Diary No.13205/2025 dated 04.04.2025 (Page No.98-99 of Case Law Compilation No.1)

(b) Case Laws decided by Hon'ble Karnataka High Court

(6) Embassy Brindavan Developers vs Commissioner of Income-tax, (2022) 145 taxmann.com 527 (Karnataka) (Page No.104-109 of Case Law Compilation No.1)

(7) CIT vs M/s. Chemsworth Pvt. Ltd., 2020 SCC OnLine Kar 5344 (Page No.100-103 of Case Law Compilation No.1)

(8) CIT vs M/s. Aztec Software Technology Ltd., ITA No.348 of 2013 dated 16.09.2020 (Karnataka HC) (Page No.110-119 of Case Law Compilation No.1)

(9) CIT vs Cyber Park Development Construction Ltd. (2020) 122 taxmann.com 82 (Karnataka) (Page No.120-122 of Case Law Compilation No.1)

(c) Case laws decided by other Hon'ble High Courts

(10) PCIT-2 vs Clix Finance India Pvt. Ltd. dated 08.01.2024 (Delhi HC) (Page No.123-131 of Case Law Compilation No.1)

(11) PCIT vs Mohak Real Estates Pvt. Ltd. (2025) 474 ITR 313 (Delhi HC) (Page No.132-136 of Case Law Compilation No.1)

(12) PCIT Vs Halmira Estate Tea Pvt. Ltd. (2025) 174 taxmann.com 421 (Calcutta) (Page No.137-141 of Case Law Compilation No.1)

(13) Spectra Shares & Scripts Pvt. Ltd. vs CIT, (2013) 36 taxmann.com 348 (Andhra Pradesh) (Page No.160-184 of Case Law Compilation No.1)

(14) PCIT vs Brahma Centre Development Pvt. Ltd., (2021) 437 ITR 285 (Delhi HC) (Page No.142-159 of Case Law Compilation No.1)

(15) CIT vs Gabriel India Ltd., (1993) 71 Taxman 585 (Bombay) (Page No.197-202 of Case Law Compilation No.1)

(16) CIT vs Sunbeam Auto Ltd., (2010) 189 Taxman 436 (Delhi) (Page No.185-196 of Case Law Compilation No.1)

(d) Case laws decided by Hon'ble Bangalore ITAT

(18) Bangalore ITAT in Mahesh Reddy vs Pr.CIT- (2024) 167 taxmann.com 297 (Bangalore – Trib.) (Page No.418-444 of Case Law Compilation No.2)

(19) Bangalore ITAT in M/s. Bhavana Credit Cooperative Society Ltd vs Pr.CIT-3, Bengaluru (Decision dated 3-12-2025 in ITA No.1074/Bang/2025) (Page Nos. 912 to 942 of Case Law Compilation No.4)

(20) Bangalore ITAT in Primary Agricultural Credit Cooperative Society vs Pr.CIT-3, Bengaluru (Decision dated 3-2-2026 in ITA No.1073/Ban/2025) (Page No. 943 to 95 of Case Law Compilation No.4)

(21) Bangalore ITAT in M/s. Suvila Properties Pvt. Ltd. vs Pr.CIT (Decision dated 16-02-2026 in ITA No.1140/Bang/2025. (Page Nos. 958 to 967 of Case Law Compilation No.4)

(22) Bangalore ITAT in M/s. Poovayya & Co. vs Pr.CIT (Decision dated 20-01-2026 in ITA No.1217/Bang/2025)

14. Issue No.3 : Grounds on Revision Order passed under section 263 of the Act is in violation of principles of Natural Justice (Kindly refer Revised Grounds of Appeal Nos.19 & 20)

14.1 Issue regarding treatment of income from sale of UDS under head Income from Business was not included in the Notice issued under section 263 dated 23-1-2025.

i) The learned Pr.CIT vide notice dated 23.01.2025 issued under section 263 of the Act has proposed the revision proceeding on following two issues:

(a) Disallowance of sales commission expenses of Rs.11.22 crores paid to M/s. BHN Foods towards sale of UDS claimed as deduction under section 48(i) from LTCG.

(b) Treating of income from sale of Land vide registered Agreement of Sale without Possession dated 27.05.2019 in favour of the Developer, under head Income from Other Sources in place of LTCG taxed in the assessment order dated 29.09.2022.

ii) In the revision order, the learned Pr.CIT in addition to the above two issues has added another issue , namely - 'treating the impugned income from sale of Land under head Income from Business'.

iii) In the revision order, the learned Pr.CIT has narrated certain facts pertaining to the JDA dated 28.03.2011 entered into by the appellant for contribution of Binnypet land for development by the developer based on his predecessors' previous revision orders under section 263 of the Act dated 18.03.2020 30.03.2021 for Assessment Years 2015-16 and 2016-17 respectively.

14.2 Learned Pr.CIT failed to adhere to the principles of Natural Justice by not providing opportunity to file the objections to the new issue at the time of personal hearing pursuant to Notice u/s 263 dated 23-1-2025.

i) The learned Pr.CIT in adjudicating the above mentioned third issue has not provided the appellant an opportunity to make submissions or rebut to the said allegations.

ii) The learned Pr.CIT failed to adhere to the principles of natural justice by not providing opportunity to file the objections to the new issue at the time of personal hearing pursuant to Notice under section 263 of the Act dated 23.01.2025.

iii) Therefore, the appellant is of the view that the revision order dated 24.03.2025 in respect of above mentioned third issue is beyond the scope of issues raised in the Notice issued under section 263 dated 23.01.2025.

iv) Consequently, the impugned revision order is bad in law and liable to be quashed on this particular issue.

14.3 Case laws where an issue did not form part of show cause notice issued under section 263, it cannot form basis for revision of assessment order under section 263 of the Act.

The appellant places reliance on the following decisions in support of the case of the appellant on the above mentioned issue.

(1) CIT vs Ashish Rajpal, (2009) 180 Taxman 623 (Delhi). (Page No. 203-214 of Case Law Compilation No.1)

(2) CIT vs Contimeters Electricals Pvt. Ltd., (2009) 178 Taxmann 422 (Delhi). (Page No. 215-217 of Case Law Compilation No.1)

(3) Vesuvius India Ltd. vs CIT – (2012) 23 taxmann.com 425 (Kol.) .(Page No. 218-223 of Case Law Compilation No.1)

(4) Genesis Colors Pvt. Ltd., (2014) 42 taxmann.com 552 (Delhi Trib). (Page No. 234-246 of Case Law Compilation No.1)

(5) Asia Resort Ltd vs ACIT, (2005) 143 Taxman 8 (Chandigarh) (Page No. 224-233 of Case Law Compilation No.1)

(6) Peerless General Finance & Investment Co. Ltd. vs ACIT, (2006) 5 SOT 17 (Kolkata). (Page No. 247-255 of Case Law Compilation No.1)

(7) ITAT Delhi in NIKC Projects Pvt. Ltd. vs PCIT in ITA No.2804/Del/2025 dated 24.10.2025. (Page No. 791-817 of Case Law Compilation No.3)

(8) Bangalore ITAT in M/s. Poovayya & Co. vs Pr.CIT (Decision dated 20-01-2026 in ITA No.1217/Bang/2025

B. On Merits of the Issues contested

15. Issue No.4 : Merits on learned Pr.CIT's observations that the learned AO has not conducted detailed inquiry and proper verification in respect of sale commission of Rs.11,22,17,066/- paid to a Consultant, M/s. BHN Foods and hence the action of learned AO allowing the claim of appellant as deduction under section 48(i) of the Act from LTCG is erroneous. (Kindly refer Revised Grounds of Appeal No.13).

15.1 Observations of the learned Pr.CIT in the revision order on above mentioned issue.

i) In para No.8,9,10 of the revision order **(Page No.29-41 of Appeal Memo)**, the learned Pr.CIT has made certain observations on the sales commission of Rs.11.22 Crores paid to M/s. BHN Foods by the appellant and claimed as deduction u/s 48(i) from LTCG.

15.2 Submissions made by the appellant to the above observations of learned Pr.CIT

The appellant has made following submissions to the above mentioned observations of the learned Pr.CIT vide its response dated 12.02.2025 **(Page No. 55-110 of Appeal Memo)**. However, the learned Pr.CIT in para No.14 of impugned revision order has failed to take into consideration the said submissions, except on furnishing of ledger extracts and bank statements during assessments proceedings.

15.3 The appellant had appointed M/s. BHN Foods as Consultant on 11-12-2017.

i) **Initially, the appellant has appointed M/s BHN Foods as Consultant vide Engagement Letter dated 11th December,2017 to explore and identify a potential investor, who is interested in purchasing the**

assessee's future receivables from Parkwest Project at Binnypet under JDA dated 28-3-2011 , which the assessee was receiving from the Purchaser, M/s. Relationship Properties Pvt. Ltd.,

ii) Copy of the said Engagement Letter dated 11-12-2017 issued in favour of M/s. BHN Foods was submitted to the learned Pr.CIT for his perusal **(Page nos. 3 to 4 of Paper Book No1)**.

iii) During the assessments proceedings, the learned AO has not asked for a copy of the Engagement Letter for and hence the same was not furnished to him, but all other documents, as called for, was submitted..

15.4 Main terms of the Engagement Letter dated 11-12-2017 issued to M/s. BHN Foods was brought to the notice of the learned Pr.CIT

The above referred Engagement Letter contains the following main terms and conditions:-

i) The said Consultant would use their contact, influence and expertize in locating and identifying the potential Purchaser, who are interested in outright purchase of assessee's future entitlements in Parkwest Project.

ii) They will negotiate with the potential Purchaser, the consideration amount, other terms and conditions governing the Deal on behalf of the assessee.

iii) They will act as a coordinator between the Purchaser and the assessee to conclude the Deal successfully.

iv) They will scrutinize, vet, and advise the assessee on the Deal documents, which is required by the prospective Purchasers.

v) On successful completion of the Deal, the assessee wil pay to them Consultation charges at 2% of the consideration amount received by the assessee plus applicable taxes.

15.5 Necessity of engaging M/s.BHN Foods as Consultant and the Justification for payment of sales commission to them was brought to the notice of learned AO and learned Pr.CIT

i) Initially, the Consultant, M/s. BHN Foods had approached few potential investors and tried their level best to persuade them to purchase the

assessee's future entitlement from the Parkwest project emanating from the JDA, at a lump sum consideration, but they could not succeed in their attempts.

ii) Finally, the said Consultant, through several rounds of discussions and negotiations with the top management of M/s. Relationship Properties Pvt. Ltd. (Developer/Purchaser) could convince and persuade them to purchase the undeveloped undivided share of Land in the Parkwest project at a lump consideration.

iii) Besides, the said Consultant had assisted the appellant to conclude the sale deal successfully, such as by conducting series of negotiations on fixing sale consideration based on the Net Present Value of future receivables entitled to the assessee from the Parkwest project and other commercial terms and conditions governing the deal with the Purchaser, coordinating between the parties on different aspect of the deal, assisting in scrutinizing and vetting the deal and other legal documents, to finalize the Escrow Agent to deposit the common original title deeds relating to the Binnypet Land in their custody, etc.

iv) Without the said Consultant's help and continuous services rendered by them on various facets of the deal, the sale deal with the Developer/Purchaser of Land should not have become possible and successful.

v) **Keeping in view of these facts, it was absolutely necessary to utilize the services of M/s. BHN Foods to materialize the sale deal with the Developer/Purchaser of Land. Even if the Purchaser of Land, being a Developer is known to the appellant, in a big deal like this, to chalk out the nitty-gritty of the deal and to protect the interest of the appellant, the services of a Consultant is essential.**

vi) Therefore, in consideration of their services, the appellant had paid sales commission @2% of sale consideration received plus GST to them.

vii) Since the sales commission paid to the said Consultant is an expenditure incurred wholly and exclusively in connection with the sale of property, the same was claimed as a deduction section 48(i) of the IT Act against income from LTCG.

15.6Learned AO has considered the necessity and justification for payment of brokerage charges and on satisfaction allowed the same as deduction.

i) During the assessment proceedings, the appellant in its reply dated 19-8-2022 to query No.6 of Notice u/s.142(1) dated 3-8-2022, the appellant had given the above justification for incurring this expenditure together with supporting documents, as asked for, for consideration of learnedAO and on perusal of the same, he had found the same in order and accordingly allowed the said sales commission payment to M/s. BHN Foods as deduction.

ii) In this regard, kindly refer to copy of the appellant's reply to their Query No.6 submitted to the learned Pr.CIT. **(Page no. 5 of Paper Book No.1).**

15.7 Hon'ble Supreme Court's ruling on necessity of incurring an expenditure by a businessmen in the course of his business

In the above context, the appellant would like to place reliance on following decisions of Hon'ble Supreme Court, for kind consideration of the Hon'ble Bench:-

(1) Hon'ble Supreme Court in CIT vs Dhanrajgiri Raja Narasingiri – (1973) 911 ITR 544 (SC) (Page No.256-260 of Case Law Compilation No.1) wherein it was held that *"it is not open to the Department to prescribe what expenditure an assessee should incur and in what circumstances he should incur that expenditure. Every business man knows his interest best."*

(2) Hon'ble Supreme Court in Sassoon J David & Co. (P) Ltd. vs CIT (1979) 118 ITR 261 (SC) (Page No.261-271 of Case Law Compilation No.1) has held that *"Ordinarily it is for the assessee to decide whether any expenditure should be incurred in the course of his or its business. Such expenditure may be incurred voluntarily and without any necessity and it is incurred for promoting the business and to*

earn profits, the assessee can claim deduction under section 10(2)(xv) of the IT Act, 1922 even there was no compelling necessity to incur such expenditure."

15.8 Learned AO has verified the bona fide of brokerage expenditure incurred by the appellant from the details as called for and submitted (including Bank payment details) during assessment proceedings.

As explained in para 2.4 herein above, the appellant submits that in response to Query Nos.5 and 6 raised by learned Assessing Officer in their Notice under section 142(1) of the Act dated 03.08.2022 **(Page No. 109 to 114 of Paper Book No.1)**, the appellant had submitted following details/supporting documents to learned Assessing Officer with regard to payment of sales commission, for their consideration:-

i) Details of Party-wise expenses incurred exceeding Rs.5 Lakhs during FY 2019-2020 **(Page No. 7 to 8 of Paper Book No.1)**. Under heading "Direct Expenses", Sales Commission paid to M/s. BHN Foods is reflected.

ii) Ledger Account of M/s. BHN Foods, wherein the payment of sales commission through HDFC Bank Account on 5-7-2019 and debiting of brokerage expenses on 22-7-2019 on receipt of Tax Invoice from BHN Foods are reflected. **(Page No. 9 to 10 of Paper Book No.1).**

iii) Detailed statement showing the particulars of TDS deducted on expenses debited to Income & Expenditure Account together with an explanation that sales commission of Rs.11,22,17,066 (with GST) paid to M/s. BHN Foods (Consultant) for sale of UDS in Parkwest project at Binnypet is included in Cost of Acquisition in Schedule-11 – Income from Long-term Capital gains and claimed the same as part of cost of acquisition against LTCG in the ITR/Computation of Total Income. **(Page No. 11 to 13 of Paper Book No.1)**.

iv) Copy of relevant Bank Account statement for July,2019 in respect of current account no.502000005793626 with HDFC Bank Ltd. was submitted to AO (vide its response to Notice u/s 142(1) dated 16-12-2021 referred to above) wherein the payment of sale commission to M/s. BHN Foods is appearing. **(Page No. 14 of Paper Book No.1).**

15.9 Allowing the deduction of sales commission paid by the appellant by the learned AO after due verification of the details/ documents submitted is not erroneous as mentioned by the learned Pr.CIT.

i) In para-10 of the impugned revision order, one of the ground taken by the learned Pr.CIT to treat the assessment order as erroneous is based on his observations in paras 8 & 9 in respect of payment of sales commission to M/s. BHN Foods by the appellant

ii) From the above explanations together with Annexures submitted to the AO during assessment proceedings and thereafter to the learned Pr.CIT during revision proceedings, it is obvious that accounting of the sales commission expenditure incurred by the appellant is not through journal entry and but actual payment was made to BHN Foods through Bank Account on 6-7-2019 after deducting TDS thereon. This fact has been accepted by the learned Pr.CIT in para-14 of the revision order.

iii) The appellant understand that M/s. BHN Foods has duly incorporated the sales commission received from the appellant in its income and paid due taxes at normal rate of 30% plus SC & EC, which works out to Rs. 3.92 Crores (approximately).

iv) During assessment proceedings, the appellant had furnished all the details pertaining to sales commission paid to M/s. BHN Foods including bank payment details and justification for the said payment, to the learned AO for their consideration.

v) The learned AO had verified the genuineness and necessity of the said expenditure and found the same in order.

vi) Accordingly, after due consideration of appellant submissions with supporting documents referred to above, the learned AO had allowed the said expenditure as deduction, which was necessarily incurred for earning the LTCG by the appellant.

vii) Therefore, the learned Pr.CIT's observation in the impugned revision order that allowing the sales commission paid as expenditure without verification of same by the learned AO is incorrect.

vii) The appellant submits that as explained hereinabove, the allowing the said claim of the appellant by the learned AO is not erroneous and hence same is not prejudicial to the interest of Revenue, as alleged by the learned Pr.CIT in the revision order.

15.10 Case Laws relied upon by the appellant in support of its above submissions.

The appellant places reliance on the following case laws in support of the appellant's contention thatsales commission paid to above Consultant is deductible expenditure under section 48(i) of the Act :

(a) Case laws decided by Hon'ble Supreme Court

(1) CIT vs Dhanrajgiri Raja Narasingiri, (1973) 91 ITR 544 (SC) (Page No.256-260 of Case Law Compilation No.1)

(2) Sassoon J.David & Co. (P) Ltd. vs CIT, (1979) 1 Taxman 485 (SC) (Page No.261-271 of Case Law Compilation No.1)

(b) Case laws decided by Hon'ble ITATs

(3) Kaushalya Devi (Deceased) vs CIT, Delhi ITAT decision dated 20-4-2018 in ITA No.600/2004 (Page No.829-859 of Case Law Compilation No.3)

(4) Sunil Kapoor v. ACIT, (2024) 161 taxmann.com 748 (Delhi)(Trib). (Page No.783-790 of Case Law Compilation No.2)

(5) Fozia Khan vs ITO, (2020) 119 taxmann.com 187 (Jaipur-Trib.) (Page No.825-828 of Case Law Compilation No.3)

16. Issue No.5 : Merits on Learned Pr.CIT's opinion in holding that the registered Agreement of Sale without Possession dated 27-5-2019 did not constitute a valid "transfer" under section 2(47) of the Act and hence the full sale consideration received is not taxable under head "Capital gains" but same is taxable under head 'Income from Other Sources'. (Kindly refer Revised Grounds of Appeal Nos.12,14 & 15)

16.1 Learned Pr.CIT is not justified in law in not accepting the LTCG offered to tax in the ITR.

The appellant submits that the learned Pr. Commissioner of Income-tax is not justified in law in not accepting the income offered under the head Capital gains a sum of Rs.460,69,43,333/- on the facts of the case and keeping in view of the provisions of section 2(47) of the I.T.Act, as explained herein below in detail.

16.2 Observations of learned Pr.CIT on registered Agreement of Sale without Possession dated 27-5-2019.

In later part of Para-17 of the revision order, the learned Pr.CIT has made certain observations on registered Agreement of Sale without Possession dated 27-5-2019 in support of his contention that the said Agreement does not constitute transfer u/s 2(47) of the Act.

16.3 Appellant's submissions in its written submissions dated 12-2-2025 in response to above observations in the Notice dated 23-1-2025 were not considered by learned Pr.CIT and he is not sure whether sale consideration received from sale of Land is taxable either under head "Income from Other Sources" or as "Income from Business" in the hands of the appellant.

i) The appellant in its written submissions dated 12-2-2025 has responded to all the above observations at length for consideration by the learned Pr.CIT. However, in the impugned revision order, the learned Pr.CIT has just repeated all such observations but he has not dealt with the submissions made by the appellant in the revision order and is conspicuously silent on the same.

ii) Further, the learned Pr.CIT is not sure whether the sale consideration received is taxable under which head – i.e. either Income from Business or Income from Other Sources or Capital gains.

iii) After setting aside the assessment order, the learned Pr.CIT is directing the AO to carry out necessary verification and examination regarding treatment of income arising in view of Agreement of Sale without

Possession dated 27-5-2019 and find out the exact head of income under which the said income is taxable.

16.4 Reasons for not executing Sale Deed in favour of the Developer/ Purchaser for sale of undeveloped UDS of the Parkwest project on receipt of full sale consideration.

i) Initially, the appellant had requested the Developer/Purchaser, to execute a Sale Deed for sale of said UDS to them. However, the Developer represented that they want to continue with the development of Parkwest project on the undeveloped UDS (earmarked for Phase-III of Parkwest Project for remaining 5 Towers), and after development they would be selling and conveying transfer of ownership on the constructed flats together with proportionate UDS to the respective flat buyers based on the two Power of Attorneys conferred upon them earlier.

ii) Hence, to reduce their burden on payment of Stamp Duty, the Purchaser had insisted the appellant to execute a comprehensive Agreement of Sale without Possession together with continuation of existing Power of Attorneys, instead of Sale Deed, which attracts substantial stamp duty.

iii) Since the Purchaser is responsible for payment of full stamp duty and the appellant has received full sale consideration from the sale, the appellant has agreed to execute the Agreement of Sale without Possession dated 27-5-2019 and to register the same on 20-6-2019 in favour of the Purchaser against receipt of full sale consideration.

16.5 Explanations on payment of inadequate Stamp Duty of Rs.20,000 on registered "Agreement of Sale without possession" dated 27-5-2019 as stated by the learned Pr.CIT.

i) Appellant has not paid the Stamp Duty and as per clause 12-6 of the Agreement of Sale, the Purchaser is liable/responsible to pay the Stamp Duty & Registration charges

ii) In the present case, payment of 2% Stamp Duty on JDA as per Article 5(f) of Karnataka Stamp Act,1957 does not arise as the appellant has sold

the undeveloped UDS measuring 6,42,790.53 sq.ft available in the Project to the Developer/Purchaser directly against lump sum sale consideration received by way of separate Agreement of Sale and not through JDA.

iii) Further, any subsequent changes/amendments to the terms of original JDA dated 28-3-2011, can be effected through a Supplemental JDA and the stamp duty payable on said Supplemental JDA is maximum Rs.500/- since the Developer has already paid proper stamp duty on original JDA dated 28-3-2011.

16.6 Purchaser and the appellant had received a Notice dated 23-12-2022 from District Registrar under section 46A of Karnataka Stamp Act,1957 for recovery of stamp duty short levied on said Agreement of Sale.

i) Based on said objections raised by the Revenue Audit Party about levy of deficit stamp duty on the Agreement of Sale without Possession registered on 20-06-2019 , **the District Registrar, Rajajinagar Registration District, Bangalore had issued a Recovery Notice dated 23-12-2022 to the Purchaser, Relationship Properties Pvt Ltd. and a copy was endorsed to the appellant (being the Seller), thereby initiating the proceedings under section 46A of the Karnataka Stamp Act, 1957 for recovery of substantial amount of stamp duty short levied.**

ii) Since the Purchaser is responsible for payment of the stamp duty including any deficit thereon, the appellant understands that the **Purchaser has filed a writ petition challenging the said Recovery Notice and also against Revenue Audit Party report regarding computation of deficit stamp duty under incorrect clauses of Karnataka Stamp Act and for payment of huge stamp duty by them, before High Court of Karnataka and said honourable High Court has granted interim stay in the matter**. The said writ petition is pending for disposal.

iii) A copy of above Recovery Notice dated 23-12-2022 received from the District Registrar (in Kannada) with translation in English was submitted to learned Pr.CIT for his perusal **(Page nos. 15 to 16 of Paper Book No.1)**.

16.7 The appellant had received full sale consideration at the time of execution of registered Agreement of Sale dated 27-5-2019 and hence appellant has no economic interest, benefits and income arising out of the Land (UDS) sold to the Purchaser.

i) The appellant submits that In terms of clauses 3 of registered Agreement of Sale dated 27-5-2019 (**Page Nos. 17 to 47 of Paper Book No.1)**, the total sale consideration payable by the Purchaser to the Sellers for the Land/UDS sold is Rs.560,02,86,000/- and out of which the share of the appellant, being 84.906% works out to Rs.475,49,60,377/-.

ii) As mentioned in clause-4 of the Agreement of Sale, the Purchaser had paid the full sale consideration to the Sellers after deducting 1% TDS and adjusting balance amounts due out of refundable deposits received at the time of execution of JDA. Accordingly, as mentioned in clauses 4.1.1 (a) of the said Agreement, the appellant had received net consideration of Rs.346,99,80,396/ after deducting TDS of Rs.4,75,49,604/- and adjustment of balance amount of refundable deposit of Rs.123,74,30,377/- vide Pay Order dated 20-6-2019.

iii) In clause 4.2. of said Agreement, it has been categorically stated that -

"The Parties hereby agree and confirm that on payment of the Sale Consideration as per clause 4.1 above, there are no other dues payable to and/or receivable between the Parties."

iv) From these facts, it is quite evident that from the date of registration of said Agreement of Sale on 20-6-2019 and on receipt of full sale consideration, the appellant has no economic interest, benefits and income, whatsoever, arising out the Undivided Share of Land sold to the Purchaser. All the economic benefits accruing on the said Land is entitled to the Purchaser alone, with effect from the date of registration of said Agreement of Sale on 20-6-2019.

v) The appellant submits that it has extinguished all its right to receive any economic benefits and income, whatsoever arising out of the said Land in favour of the Purchaser from the date of said Agreement of Sale.

16.8 Agreement of Sale without Possession dated 27-5-2019 (registered on 20-6-2019) executed by the appellant (as a Seller) in favour of the Purchaser/Developer is comprehensive and far-reaching, conferring all rights, interests, economic benefits, entitlements, development rights, on said Undivided Share of Land (UDS) in favour of the Purchaser including the power to sell to any third party buyers as they may wish without seeking any consent from the assessee. As such, the Purchaser has become De-facto Beneficial Owner of the said UDS sold to them by the appellant with effect from date of said Agreement of Sale.

To substantiate the fact that the Purchaser is the de-facto Beneficial Owner of the said Land and the appellant has extinguished all its rights powers, and entitlements on the said Land in favour of the Purchaser, the appellant would like to refer the following clauses stipulated in the registered Agreement of Sale dated 27-5-2019 **(Page Nos. 17 to 47 of Paper Book No.1)** for kind perusal of the Hon'ble Bench:-

(i) Clause 1 : Definitions and Interpretation

(d) "Property hereby Agreed to be Sold"

(e) "Sale Consideration

(ii)Clause-2 Sale of the Property hereby Agreed to be Sold

(iii) Clause-3: Consideration

(iv) Clause - 4 : Payment of Sale Consideration

(v) Clause-5 : Possession

(vi) Clause –6 : Representations and Warranties given by the Sellers

(vii) Clause 7 : Conveyance

(viii) Clause 8 : Covenants given by the Sellers including Power of Attorneys

(ix) Clause-9 <u>Nomination</u>

(x) Clause-10: Specific Performance

xi) Clause 12.5 Entire Agreement

16.9 The registered Agreement of Sale without Possession dated 27.5.2019 is a comprehensive Agreement bestowing bundle of absolute rights and benefits in favour of the Purchaser for its

enjoyment as an apparent/ beneficial owner of the Property sold by the appellant and not a mere contract of sale without transfer of ownership as observed by the learned Pr.CIT.

The appellant submits that Land ownership typically carries with it a bundle of rights. A Landowner has the right to possess, sell, lease, develop, sub-let, occupy, etc. On an overall analysis of above mentioned clauses contained in the said Agreement of Sale dated 27-5-2019, the following facts are emerging:-

i) In terms of clauses 2,3, and 4 of the Agreement of Sale, the Purchaser has become de-facto beneficial owner with effect from date of Agreement of Sale on sale Undivided Share of Land (UDS) on receipt full consideration by the appellant on 20-6-2019.

ii)The Seller (appellant) has no claim or interest, whatsoever on the Land sold with effect from 20-6-2019 and the Purchaser has no obligation, responsibility, commitment, whatsoever to the Sellers (appellant) from that date.

16.10 The Sellers is bound unconditionally to deliver and put the Purchaser or anyone claiming through the Purchaser, the legal possession of the UDS sold or any parts thereof on execution of Sale Deed and Sellers has no right to refuse/ withhold the legal possession.

i) The Purchaser, being a Developer is holding License on the entire Binnypet Land, which was granted to them under JDA dated 28-3-2011. As such, the said Land including the Undivided Share of Land (UDS) now sold to the Developer, is under their custody since then.

ii) **In terms of clause-5-.Possession, of the said Agreement of Sale,the Sellers (appellant) are bound unconditionally to deliver and put the Purchaser or anyone claiming through the Purchaser, the legal possession of the UDS sold or parts thereof** on execution and registration of Sale Deed in favour of the Purchaser or any of its nominees as and when the Purchaser so desire or demand pursuant to clause-7 – unconditional right of Conveyance granted to them. The Seller has no right

to refuse or withhold the execution of Sale Deed and parting with the legal possession of the UDS sold to them.

iii) **Further in terms of clause 8.1(e) – the Sellers (appellant) has granted twoPower of Attorneys in favour of the Purchaser to deal with the Property agreed to be sold in any manner or part with possession of the same on behalf of the Sellers. (Page no. 34 of Paper Book No.1)**.

iv) By virtue of said Power Attorneys, the Purchaser is empowered to deal with or part with the de-jure (legal) possession of sold UDS in favour of any third party in any manner, without seeking any consent from the appellant and the appellant cannot object to the same.

v) The Purchaser, on behalf of the Sellers, is also authorized to execute Conveyance Deed in respect of UDS sold to them, to any third party buyers, as they deem fit.

16.11 Unconditional right of conveyance granted in favour of the Purchaser or their Nominees together with Power of Attorney in favour of the Purchaser

i) In terms of clause 7 – Conveyance - of the said Agreement of Sale, as & when demanded by the Purchaser, the Sellers (appellant together with another Landowner) is obligated to execute and register Sale Deed in favour of the Purchaser or any of its nominees either by themselves or through the Power of Attorney already granted earlier in favour of the Purchaser, so as to vest in the Purchaser or any person claiming through the Purchaser all rights, title and interest to such sale and corresponding constructed area in terms of the JDA, the absolute right, title and interest in the Property hereby Agreed to be sold or any parts thereof from time to time.

ii) The Sellers (appellant), being de-jure/ legal owner of the said Land exists only on empty husk, is simply required to execute Sale Deed in favour of the Purchaser or its nominees or the Flat Purchasers, for which necessary Power of Attorney has already been granted by the Sellers

(appellant) in favour of the Purchaser and the same is valid and subsisting as per clause 8.1(e) of said Agreement of Sale.

iii) Further, the Sellers (appellant) do not have any role, responsibility, accountability, liability on the said Land and/or in the development/project proposed to be executed on the said Land by the Purchaser.

iv) The Seller (appellant) cannot revoke/refuse this unconditional right of conveyance and Power of Attorney conferred upon the Purchaser on any grounds, as the appellant has received the full sale consideration from them.

v) From the above clause, it is obvious that the appellant had relinquished and/or extinguished its right of conveyance in favour of the Purchaser or its nominees unconditionally.

vi) In terms of clause 8.2, the Purchaser shall alone be responsible to comply with the provisions of law relating to the development of the project Parkwest including the Real Estate (Regulation and Development) Act,2016 (RERA) in respect of the development proposed to be carried out by the Purchaser.

vi) Further, in terms clause 8.3, the Purchaser alone is liable to make payment of any property tax and all statutory and other outgoings in respect of the Property hereby agreed to be sold and shall hold the Sellers fully indemnified against any claim or demand in respect of such taxes and outgoings on the said Land.

16.12 The Sellers (appellant) have conferred absolute rights in favour of the Purchaser, including extending the two Power of Attorneys already granted to the Purchaser to deal with the property agreed to be sold in any manner or part with possession of the same on behalf of the Sellers.

In clause-8 – Covenants - of the said Agreement of Sale, the Sellers have given certain undertakings and authority to the Purchaser and the important covenants are given below:-

Clause -(v) **Continuation of existing Power of Attorneys – The Sellers confirm already having executed two Power of Attorneys under the**

JDA and only the Attorney (Purchaser) (Page Nos. 45 to 67 of Paper Book No.1) appointed thereunder shall be entitled to deal with the Property agreed to be sold in any manner or part with possession of the same on behalf of the Sellers.

Clause (vi) In the Power of Attorney dated 30-3-2011, the Purchaser has got authority to further delegate the powers conferred upon them to any person/s as they may deem fit, authorising such person/s to do and make all acts and things which the Attorney is authorised to do except the power of delegation.

Clause(vii) By virtue of these Power of Attorneys, the Purchaser is executing all the documents, including Sale Agreements & Sale Deeds in respect of flats already sold to the end buyers under JDA on behalf of the assessee/Sellers, which they will continue to exercise pursuant to the terms of the said Agreement of Sale.

Clause (viii) Copies of two Power of Attorneys dated 28-3-2011 and 30-3-2011 granted in favour of the Purchaser (Relationship Properties Pvt. Ltd.) were submitted to learned Pr.CIT for his information. (Page Nos. 45 to 57 and 58 to 67 respectively of Paper Book No.1).

16.13 The Purchaser is entitled to nominate all their right, title and interest in the Property agreed to be sold or any parts thereof to any third party, including the buyers of the flats constructed therein

i) In terms of clause 9.1 of said Agreement of Sale, the assesse(sellers) shall execute the Sale deed conveying the Property hereby agreed to be sold either in favour of the Purchaser and/or its Nominees.

ii) In terms of clause 9-2 of the Agreement of Sale, the Purchaser is entitled to nominate all their right, title and interest in the Property agreed to be sold or any parts thereof from time to time to buyers of constructed area in the development on the Schedule A Property or

by way of bulk sale to any third party purchasers on such terms and conditions as the Purchaser may so desire, without seeking any non-objection from the Sellers (appellant).

iii) This clause confers absolute discretion to the Purchaser to decide whether to take up the development and construction of flats on the said Land in full or part OR sell the said Land to any third party purchasers in bulk. For doing so, no permission from Sellers (appellant) is necessary as the Purchaser has got unfettered rights on the said Land.

16.14 Right of Specific Performance of the Agreement of Sale is granted in favour of the Purchaser by the Sellers (appellant), but the Sellers have no right of specific performance.

i) In terms of clause-10 of said Agreement of Sale, in the event of breach or threatened breach of any terms under said Agreement, in addition to any other rights or remedies available under law or in equity, the Purchaser shall have the authority to seek specific performance of said Agreement of Sale against the Sellers (appellant) and shall have the right to exercise any other such remedies cumulative or in conjunction with all other rights, remedies and actions provided by law against the Sellers.

ii) Since the Sellers (appellant) have received full sale consideration from the Purchaser and as such the Sellers (appellant) have no manner of right, title, interest or entitlements from the said Land, no such right of Specific Performance is available to the Sellers (appellant) and the said rights of the appellant stands extinguished in favour of the Purchaser.

16.15 The appellant had handed over all original/ certified copies of title and other related documents pertaining to Parkwest Project Land to the Purchaser on 20-6-2019.

i) The appellant and another Land owner together had executed a registered Supplemental Agreement dated 27-5-2018 to original JDA separately and handed over all the original/ certified copies of title and other related documents pertaining to entire Parkwest project Lands

admeasuring 46.39 acres including the Land (UDS) directly sold to the Purchaser vide Agreement of Sale dated 27-5-2019 to their custody.

ii) Copy of said Supplemental Agreement was furnished to learned Pr.CIT, for his information. (**Page Nos.68-96 of Paper Book No.1).**

16.16 Learned Pr.CIT's contention that registered Agreement of Sale without possession dated 27-5-2019 executed by the assessee is merely a contract to sell without transfer of ownership is based on incorrect assumptions on the facts of the case and misinterpretation of the registered Agreement of Sale dated 27-5-2019

i) From the above narrated clauses appearing in the Agreement of Sale dated 27-5-2019, it is abundantly clear that on receipt of full sale consideration at the time of registration of said Agreement of Sale on 20-06.2019, the Sellers (appellant) had relinquished and/or extinguished all its rights, benefits, entitlements, including development rights accruing on the said Land in favour of the Purchaser and the Purchaser has become de-facto as well as beneficial owner of said Land with effect from 20-6-2019.

ii) The Purchaser has no obligation, responsibility, commitment, whatsoever to the Sellers (appellant) and the appellant has no claim or economic interest on the said Land.

iii) The Purchaser has absolute discretion to decide whether to take up the development and construction of apartments on the said Land in full or part OR sell the said Land to any third party Purchasers in full or part. For doing so, no permission from the Sellers (appellant) are required as the Purchaser has got unfettered rights on said Land.

iv) The Purchaser has absolute right of conveyance in favour of them or its nominee(s) as and when they desire or which they can exercise with the help of Power of Attorney already granted in their favour.

v) The Purchaser has got unconditional rights to obtain the legal possession of the said Land by demanding to the Sellers to execute Sale Deed forthwith at any time.

vi) By virtue of two Power of Attorneys granted in favour of the Purchaser/Developer, the Purchaser shall entitled to deal with the

UDS sold them in any manner or part with possession of the same on behalf of the Sellers (appellant).

vii) The Purchaser has got Right of Specific Performance of the Agreement of Sale to the exclusion of the Sellers (appellant).

viii) From the above, it is very clear that the contention of the learned Pr.CIT that registered Agreement of Sale without possession dated 27-5-2019 executed by the assessee is merely a contract to sell without transfer of ownership is based on incorrect assumptions on the facts of the case and misinterpretation of the registered Agreement of Sale dated 27-5-2019

16.17 Hon'ble Supreme Court in following cases observed that in construing tax taxation provisions, facts should be viewed in natural perspective and while interpreting the terms of the agreement, the Court has to look into the substance rather than the form of it.

(i) Smt. Saroj Aggarwal vs CIT (1985) 23 Taxman 76 (SC) (Page no. 272-279) of Case Law Compilation No.1)

In para-24 of the above decision, the Hon'ble Supreme Court observed that ***in construing taxation provisions, facts should be viewed in natural perspective having regard to the compulsion of the circumstances of a case. Too hyper technical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered."***

(ii) Bhopal Sugar Industries Ltd. vs Sales Tax Officer (1977) 3 SCC 147 and
(iii) Super Poly Fabriks Ltd. vs Commissioner of Central Excise, Punjab (Civil Appeal No.1713 of 2017 – Date of decision – 24-4-2008) – (2008) 04 SC CK 0094.

In both the above cases, the Hon'ble Supreme Court has observed that ***while interpreting the terms of the agreement, the Court has to look to the substance rather than the form of it. There cannot be any doubt whatsoever that a document has to be read as a whole. The purport and object with which the Parties thereto entered into a contract***

ought to be ascertained only from the terms and conditions thereof. Neither the nomenclature of the document nor any particular activity undertaken by the parties to the contract would be decisive."

17. Appellant had relinquished and/ or extinguished all its rights, powers, benefits, economic interest, entitlements, development rights etc accruing on the Land(UDS) sold vide registered Agreement of Sale dated 27-5-2019 in favour of the Purchaser and consequently all its rights on said Land including the right of conveyance and specific performance of the said Agreement standextinguished from the date of registration said Agreement of Sale on 20-6-2019. Hence the transaction regarding sale of Land effected through registered Agreement of Sale without Possession dated 27-5-2019 is squarely falls under sub-clauses (i), (ii) and (vi) of section 2(47) read with section- 269- UA(2)(f) (ii) of the I.T.Act,1961 and hence it is a transfer of capital asset within the meaning of said section and is therefore liable to tax under head Capital gains under section 45 of the IT Act and not taxable under head Income from Other Sources as opined by the learned Pr.CIT in his revision order.

17.1 Relinquishment and/or extinguishment of all its rights on the Land sold by the appellant in favour of the Purchaser vide registered Agreement of Sale dated 27-5-2019 tantamount to transfer under sub-section (i), (ii) and (vi) of section 2(47) of the I.T.Act,1961.

i) From the terms of the registered Agreement of Sale without Possession dated 27-5-2019, as explained in detail herein above, it would be evident that the appellant had relinquished and/or extinguished all its rights, powers, benefits, economic interest, entitlements, etc accruing on the said Land/UDS in favour of the Purchaser including the right of conveyance and specific performance from the date of registration of said Agreement of Sale on 20-6-2019.

ii) Further, the appellant had received full sale consideration at the time of registration of said Agreement of Sale and as such, the appellant does not have any claim or interest, whatsoever on the said Land.

iii) The appellant had given Power of Attorneys in respect of said Land in favour of the Purchaser by which, the Purchaser is entitled to execute conveyance deed in favour of itself or to its nominees, flat buyers and third party purchasers including the power to part with possession of said Land in full or any portion of it, as they may desire, without seeking any consent from the appellant.

iv) The appellant has no authority or power to cancel the said Agreement of Sale including right of specific performances, for any reason, whatsoever.

v) The appellant had handed over all original/ certified copies of title and other relevant documents to the Purchaser on 20-6-2019 vide separate Supplemental Agreement dated 20-6-2019 to JDA (Pl. refer page nos. 68 – 96 of Paper Book No.1).

vi) The appellant is only a de-jure/registered owner of the said Land, holding empty husk of the title.

vii) On receipt of full sale consideration at the time of registration of said Agreement of Sale dated 27-5-2019, on 20-6-2019, in terms of various clauses contained in the said Agreement of Sale, and as explained herein above, the appellant had relinquished and/ or extinguished all its rights, powers, economic benefits, entitlements, etc on said Land in favour of the Purchaser on said date.

vii) The Purchaser has also got license/custody over the said Land except de-jure/legal possession. In clause 13 of the Agreement to Sell, it is mentioned that possession (i.e. de-jure/legal possession) of the Property hereby agreed to be sold has not been transferred, which would happen on execution of the Sale Deed in favour of the Purchaser or its Nominees, as and when they demand.

viii) Further, by virtue of the said registered Agreement of Sale and coupled with Power of Attorneys granted in favour of the Purchaser, the said Purchaser has acquired unconditional and irrevocable rights over the said Land.

ix) In the above context, the appellant wish to refer to the **Circular No.495 dated 22-9-1987 issued by CBDT while inserting new sub-clauses (v) and (vi) by amending section 2(47) by Finance Act,1987(Page No. 445-**

448 of Case Law Compilation No.2). Accordingly, the two Power of Attorneys granted by the appellant in favour of the Purchaser is covered by clause –(vi) of Section 2(47) of the Act.

xi) Thus, the said Agreement of Sales has got the effect of transferring or enabling the enjoyment of the said Land by the Purchaser, without any disruption from the appellant.

17.2. The Agreement of Sale dated 27-5-2019 executed by the appellant in favour of the Purchaser for sale of said Land, falls under sub-clauses (i), (ii) & (vi) of section 2(47) of the IT Act read with section 269-UA (2)(f)(ii) of the Act and is transfer of a capital asset and said Land being a capital asset is liable to capital gains tax only.

i) From the clauses contained in the registered Agreement of Sale dated 27-5-2019 and as explained in para-13 above, it would be evident that the sale of Land/UDS effected by the appellant in favour of the Purchases is squarely covered under the definition of transfers contained in sub-clauses (i), (ii) and (vi) of section 2(47) of the Act and it tantamount to transfer of a capital asset within the meaning of said section.

ii) Further, Section 269-UA (2) (f) of the I.T.Act also defines "transfer" and as per sub-clause (ii) – transfer in relation to any immovable property of the nature referred to in sub-clause (ii) of clause (d) includes any rights in or with respect to any land or any building or a part of building which has the effect of transferring, or enabling the enjoyment of, such property. In the appellant's case, registered Agreement of Sale without Possession dated 27-5-2019 has the effect of transferring, or enabling the enjoyment, of the property sold, by the said Purchaser, even though no title is vested with them.

iii) In all the above cases, for the purpose of "transfer of capital asset" under the Income-tax Act, there is no mandatory requirement of execution and registration of Sale Deed in respect of an immovable property transferring the legal ownership/ title in favour of the Purchaser by the Seller, as envisaged in section 54 of the Transfer of Property Act,1887.

iii) Hon'ble Supreme Court in case of CIT vs Podar Cement Pvt. Ltd. (92 Taxman 541) (Page Nos. 449_467 of Case law Compilation No.2) has held that

"***We are conscious of the settled position that under the common law, "owner" means a person who has got valid title legally conveyed to him after complying with the requirements of law such as the Transfer of Property Act, Registration Act, etc. But, in the context of section 22 of the I.T.Act, having regard to the ground realities and further having regard to the object of the I.T.Act, namely, "to tax the income", we are of the view , "owner" is a person who is entitled to receive income from the property in his own right."***

17.3 Registered Agreement of Sale dated 27-5-2019 executed by the appellant in favour of the Purchaser, is not merely a contract for sale, as assumed by learned Pr.CIT

i) In light of above facts and submissions, the appellant submits that the learned Pr.CIT's contention that a contract for sale is merely an Agreement to Sell and in the present case the registered Agreement of sale without possession dated 27-5-2019 does not convey transfer of ownership on said Land in favour of the Purchaser and as such it is not a transfer within the meaning of section 2(47) of the IT Act is devoid of merits.

ii) The appellant submits that inadequacy of stamp duty paid on the said registered Agreement of Sale dated 27-5-2019, does not invalidate the said Agreement of Sale. In the instant case, as stated in para – 13.7 above, the District Registrar, based on audit objection, vide Notice dated 23-12-2022 has initiated the recovery proceedings under section 46A of the Karnataka Stamp Act,1957 for payment of additional stamp duty on said registered Agreement of Sale by the Purchaser.

iii) The appellant submits that requirement of registration of Conveyance Deed followed by handing over of de-jure/ legal possession for transfer of ownership of immovable property as contemplated under Transfer of Property Act,1881 is not essential to attract the transfer of a capital asset within the meaning of provisions

of Section 2(47) read with section 269-UA(2)(f) of the I.T.Act,1961, especially in attracting clauses (i), (ii) and (vi) of said section and to tax the income/gains received from such transactions by an assessee under head Capital Gains under the I T Act.

17.4 Hon'ble Supreme Court, in following cases, held that " sale, exchange or relinquishment of asset or extinguishment of any rights therein" and or any transaction, which has the effect of transferring or enabling the enjoyment of any immovable property and de-facto transfer of immovable property in substance though title may not be transferred in law are transfer within the meaning section – 2 (47) of the Act and is liable to Capital gains.

The appellant wish to place reliance on following case laws decided by hon'ble Supreme Court in support of its above submissions:-

Case laws decided by Hon'ble Supreme Court

(1) Shri Sanjeev Lal vs CIT (2014) 46 taxmann.com 300 (SC) .(Page Nos. 280-288 of Case Law Compilation No.1)

(2) CIT vs Balbir Singh Maini (2017) 86 taxmann.com 94 (SC). (Page Nos. 468-482 of Case Law Compilation No.2)

(3) Seshasayee Steels Pvt. Ltd. vs ACIT (2020) 115 taxmann.com 5 (SC) (Page Nos. 818-824 of Case Law Compilation No.3)

(4) CIT vs Grace Collis (2001) 115 Taxman 326 (SC) (Page Nos.329-334 of Case Law Compilation No.1)

(5) PCIT vs Jupiter Capital Pvt.Ltd (2025) 170 taxmann.com 305 (SC).(Page Nos. 289- 297 of Case Law Compilation No.1)

17.5 Case laws decided Cases decided by Hon'ble High Court of Karnataka and other High Courts

In support of appellant's submissions, the appellant wish to place reliance on following case laws decided by Hon'ble Karnataka High Court and other High Courts:-

(1) CIT vs Sri H. Anil Kumar – (2012) 20 taxmann.com 430 (Karnataka) (Page Nos. 298-306 of Case Law Compilation No.1)

(2) CIT vs Sri A Suresh Rao (2014) 41 taxmann.com 475 (Page Nos. 770-781 of Case Law Compilation No.2)

(3) CIT vs Smt. Laxmidevi Ratani – (2005) 147 Taxman 642 (MP) (Page Nos. 307-311 of Case Law Compilation No.1)

(4) CIT vs Tata Services Ltd – (1980) 122 ITR 594 (BOM) (Page Nos. 312-316 of Case Law Compilation No.1)

(5) CIT vs Vijay Flexible Containers- (1990) 48 Taxman 86 (Bombay) (Page Nos. 317-322 of Case Law Compilation No.1)

(6) K.R.Srinath vs Asst CIT – (2004) 141 Taxman 268 (Madras) (Page Nos. 410-417 of Case Law Compilation No.1)

(7) Delhi High Court in Simka Hotels and Resorts vs Dy.CIT in W.P.(C) 4350/2012,- Date of decision – 17-01-2013 (Page Nos. 860-871 of Case Law Compilation No.3)

17.6Case laws decided by Hon'ble ITATs

(1) ITAT, Bangalore in Chandrasekhar Nagangowda Patil vs DCIT - (2020) 117 taxmann.com 520 (Bangalore-Trib) (Page Nos. 782 of Case Law Compilation No.2)

(2) ITAT, Mumbai in Miss Indira Vasanji Shah vs DCIT, in ITA No.8805/Mum/2011 dated 24-10-2017. (Page Nos. 323-328 of Case Law Compilation No.1)

(3) ITAT, Chennai in DCIT vs Keezhayur Sowrirajan Sreenivasan (2022) 143 taxmann.com 57 (Chennai-Trib) (Page Nos. 483-492 of Case Law Compilation No.2)

18. According to cardinal principle laid down by the hon'ble Supreme Court in several cases, that the heads of income provided in various sections of the Income-tax Act are mutually exclusive and if the income from a source falls within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

18.1 Land sold by the appellant vide Agreement of Sale dated 27-5-2019 is accounted for as Capital Asset in its books right from its

acquisition and hence any income received from said source is capital gains and cannot be taxable under head Income from Other Sources, as observed by learned Pr.CIT

i) In the Books of accounts of the appellant, the entire Land admeasuring 42 acres at Binnypet owned by the appellant and given initially for the development by the Purchaser under JDA dated 28-3-2011 is accounted for as Capital Asset right from its acquisition.

ii)Out of this Land parcel, the undeveloped extent of Undivided Share of Land, the appellant vide registered Agreement of Sale without Possession dated 27-5-2019 had sold the same directly to the Purchaser/Developer and received full sale consideration at the time of registration of said Agreement on 20-6-2019.

iii) The source of income in the present case is Land, which a Capital asset for the appellant. Therefore, the income derived by the appellant from the sale of said capital asset is taxable under head Capital Gains, which is one of the main source of income specified under the Income-tax Act, and it has got direct nexus to said source of income.

iv) As per cardinal principle laid down by the Hon'ble Supreme Court in various cases, it is submitted that the source of an income falls under any one of the five specific heads of income specified under section-14 of the IT Act, then the said income cannot be shifted to/ be taxed under the last residuary head "Income from Other Sources."

v) Therefore, the appellant submits that the intention of learned Pr.CIT to shift and tax the income received by the appellant from sale of a capital asset (Land) vide registered Agreement of Sale dated 27-5-2019 under head 'Income from Other Sources", with a sole purpose to levy higher rate of tax at 30% (instead of 20%) and that too based on audit objection, is untenable and unsustainable in law.

18.2 Hon'ble ITAT, Bangalore in its order dated 2-9-2022 has confirmed that the entire Land held at Binnypet by the assessee is Capital Asset and the income received from the Parkwest project for AYs 2015-16 and 2016-17 for sale of undivided share of Land is taxable under head Capital Gains and not as Income from Business as contended by the Revenue previously.

In response to the appeal filed by the appellant against revision orders u/s 263 passed by learned Pr.CIT dated 18-3-2020 for AY 2015-16 and dated 30-3-2021 for AY 2016-17, the Hon'ble ITAT, Bangalore vide its Order dated 2-9-2022 (Page Nos. 1-73 of Case Law Compilation No.1) has held that the Binnypet Land contributed by the appellant under Parkwest JDA is a Capital Asset and the income received from the said JDA is taxable under head Capital Gains and not as Income from Business.

18.3 As held by Hon'ble Supreme Court in below mentioned cases, the income received by the appellant from sale of Land, being Capital asset falls within the head Capital Gains exclusively and hence cannot be taxable indirectly under head Income from Other Sources on the ground of no transfer of legal ownership due to non-execution of registered Sale Deed in favour of the Purchaser.

The appellant submits that in following cases, the Hon'ble Supreme Court has held that the heads of income provided in various sections of the Income-tax Act are mutually exclusive and if the income from a source falls within a specific head, the fact that it may indirectly be covered by another head will not make the income taxable under the latter head.

(a) Decisions of Hon'ble Supreme Court

(1) The United Commercial Bank Ltd vs CIT - 32 ITR 688 (SC) (Page Nos. 335-346 of Case Law Compilation No.1)

(2) CIT vs D.P.Sandu Brothers Chembur Pvt.Ltd. 142 Taxman 713 (SC) (Page Nos. 347-352 ofCase Law Compilation No.1)

(3) Nalinikant Ambalal Mody vs CIT) (1966) 61 ITR 428 (SC) (Page Nos. 353-363 of Case Law Compilation No.1)

(b) Decisions of Hon'ble Bombay High Court

(4) Cadell Weaving Mill Co. Pvt. Ltd. vs CIT – (2001) 116 Taxman 77 (Bombay) (Page Nos. 364-380 of Case Law Compilation No.1) and Union of India & Anr. Vs Cadell Weaving Mills Co.Pvt. Ltd. & Anr. (SC) CA No.2333 of 2003 and connected matters dated 31-1-2005 (Page No.381 of Case Law Compilation No.1)

(5) Bombay High Court's in M/s. Poonawalla Estate Stud & Agricultural Farm vs CIT in ITA No.541 of 2003 and connected matters No.535 of 2003, No.540 of 2003 dated 9-7-2025 (Page Nos. 382-409 of Case Law Compilation No.1)

20. Issue No. 6: Merits on Learned Pr.CIT's alternative opinion holding that the impugned income received from sale of undeveloped Land/UDS vide registered Agreement of Sale without Possession dated 27-5-2019 is taxable under head 'Income from Business' instead of 'Capital gains' on the ground that the Binnypet Land/UDS sold is stock-in-trade and the JDA dated 28-3-2011 entered into with the Purchaser/Developer previously on said Land is adventure in nature of trade. (Kindly refer Revised Grounds of Appeal Nos. 16,17 & 18)

19.1 Observations made by the learned Pr.CIT in the revision order that he is of the opinion that treatment of Land in question as Capital asset and instead of stock-in-trade is not acceptable to him.

In the revision order dated 24-3-2025, the learned Pr.CIT has made few observations on certain covenants contained in the Joint Development Agreement (JDA) dated 28-3-2011 entered into with the Developer initially for development of residential project, namely – 'Parkwest' at Binnypet on Binnypet Land measuring 42 acres contributed by the appellant. Further, in Para-17 of the revision order, the learned Pr.CIT has opined that the treatment of Land in question as capital asset and instead of stock-in trade is not acceptable to him based on few covenants contained in the said JDA.

19.2 Appellant has neither carried out any real estate business activities nor it has purchased or sold any Land till date except sale of UDS in Binnypet Land via JDA or balance UDS to the Developer

i) The appellant submits that it is not at all engaged in the business of real estate development by itself and is not involved in real estate business activities.. The appellant is an investment Firm and has mainly made investment in Shares of the Companies in the Group and has also given advances for purchase of shares and properties of said Companies. The appellant is holding said investments in shares on long-term basis to derive capital appreciation and to earn profits in the long run and to have strategic control over the investee entities.

ii) The appellant has held only one Land property at Binnypet, Bengaluru, which was given for development under JDA dated 28-3-2011 (Page No. 68-96 of Paper Book No.1) to the Developer, M/s. Relationship Properties Pvt. Ltd. (RPPL).

iii) The appellant has neither carried out any business activities including any real estate business, nor earned any income from business. The appellant has not carried out any development activities by itself on said Binnypet Land.

iv) The appellant has derived income from Long-term Capital gains from said JDA during AYs 2015-16 to 2019-20 and offered the said income as Long-term Capital gains in its ITR, Capital gains from sale of shares of a group company during AY 2018-19 and interest income from Deposits with Banks.

v) The appellant submits that during AY 2020-21, the Company has sold the balance unsold/undeveloped UDS available in Parkwest project direct to the above Developer and the lump sum consideration received from said sale was offered to tax as Long-term Capital gains in its ITR.

vi) The appellant has never incurred any expenditure towards any business activities. The appellant has incurred nominal General and Administrative expenses to keep its legal status alive and to comply with its statutory obligations under tax laws, etc.

vii) The appellant submits that the ITRs filed for AYs 2015-16 to 2019-20 (except AY 2019-20) declaring incomes received from JDA towards contribution of Land as LTCG were taken up for complete scrutiny by the Revenue. After detailed examination and verifications, the respective learned Assessing Officers had accepted the said income as taxable under head LTCG.

iv) During scrutiny for these AYs, the learned AOs have found that the appellant has not carried out any business activities nor earned any income from business. Hence the learned AOs have disallowed the said General and Administrative expenses claimed as loss under schedule –BP of ITR and then set off u/s 71(2) of the Act against Interest Income and LTCG earned in a particular AY following the accounting concept of "Matching Principle".

19.3 Binnypet Land is held by the appellant as a capital asset (Fixed Asset/Capital work in Progress in its Books) from the date of its receipt as capital contribution from a Partner.

i) The appellant had received the Land parcels admeasuring 42 acres (i) Land measuring 28.9075 acres on 2-7-2008 and ii) Land measuring 13.0925 acres on 1-6-2010) situated at Binnypet, Bengaluru from a Partner, namely M/s. ETA Karnataka Estates Ltd. (a Land holding Company) on capital account as their Capital contribution, initially to set up an Infopark project on said Land.

ii) Since the appellant's intention was to embark upon a capital investment project, the appellant has accounted the said Binnypet Land as Capital Work in Progress/ Fixed Asset at its book value. Every year, in its Balance-sheets, the said Land was shown as Fixed Asset/ Capital Work-in-Progress with break up of Land cost and Other Expenses mentioned separately in the Schedule to Balance-sheet.

iii) Later, due to financial & other constraints, the appellant had to abandon its initial proposal to set up an IT-SEZ Park on the said Land. Then the appellant kept the Land idle for some time.

iv) Hon'ble **High Court Karnataka High Court in the case of CIT vs M/s.Bagmane Developers, Bangalore in ITA No.157/2011 dated2-9-2016 (Page No.636-668 of Case Law Compilation No.2) has observed that "*The promoters of a Software Park can generally view this project only for the purpose of investment and not as stock-in-trade; and* t*he buildings and infrastructures created are leased out to various clients, the maintenance of which is looked after by the promoters.*"**

19.4 When the appellant Firm received the Binnypet Land as a capital contribution from a partner, it became the exclusive property of the appellant Firm under section 14 of Indian Partnership Act,1932 and it loses its previous characteristic as a specific asset of the contributing partner.

i) The appellant submits thatIn terms of section 2(14) of Indian Partnership Act,1932, when a Firm receives an asset from a partner towards capital contribution, then the said asset become the exclusive property of the Firm and it does not retain its previous characteristics.

ii) In the above context, the appellant wish to refer to the recent decision of Hon'ble Supreme Court in case of **Sachin Jaiswal Vs Hotel Alka Raje & Other** in Civil Appeal Nos. of 2025 (arising out of SLP (C) No.18717 of 2022 dated 27-2-2025 **(Page No.493-505 of Case Law Compilation No.2)**ruled that once a property is contributed to a partnership firm, it becomes the Firm's exclusive property under section 14 of the Indian Partnership Act, 1932, unless there is evidence to the contrary. The Court placed reliance upon a judgment of Supreme Court in case of **Addanki Narayanappa vs Bhaskara Krishnappa (1966)** SCC OnLine SC 6 in which this Court has held that irrespective of the character of the property, when it is brought in by the partner when the partnership is formed, it becomes a property of the partnership firm, by virtue of section 14 of Partnership Act.

iii) Therefore, the appellant submits that when a Firm receives an asset on capital account from a partner, it does not retain its previous characteristics and it becomes the property of the Firm. The contributing partner has no exclusive right to possess or use the said asset.

19.5 Firm is an independent and distinct juristic person under Income-tax Act and gets independent right how to treat the asset received on capital account in its Books, considering the nature of activities it intends to pursue.

i) As per principles laid down by the High Courts and Supreme Court, under Income-tax law, a Firm is an independent and distinct juristic person for the purpose of assessment as well as for recovery of tax as it is a "**Person"** within the meaning of section of section 2(31) of the Income-tax Act,1961 having its own entity and personality. It is also a separate entity under the sales tax law.

ii) The Hon'ble Supreme Court in case of **'CIT vs G. Parthasarthy Naidu and others** (1999) 104 Taxman 197 (SC) **(Page No.506-510 of Case Law Compilation No.2)** following the principles laid down by Supreme Court in another case '**Deputy CST vs K.Keluhutty'** held that where two partnership firms having same partners constituted under different partnership deeds having distinct business could be treated as two separate legal entities for the purpose of assessments. In that case, it is held that partnership agreement creates and defines the relation of partnership and therefore identifies the Firm. Each partnership agreement may constitute a distinct and separate partnership and therefore, distinct and separate Firms.

19.6 Binnypet Land was contributed by appellant for development of a residential project by M/s. Relationship Properties Pvt. Ltd. (RPPL) vide JDA dated 28-3-2011 and received revenue share from said JDA

i) After keeping the said Land idle for some time, the appellant had contributed the Binnypet Land measuring 42 acres for development of a residential project, namely – "Parkwest" to RPPL vide JDA dated 28-3-2011. In the same JDA, the above mentioned Partner of the appellant had also contributed additional Land measuring 5.04 acres, and thus total Land contributed for said project was 47.04 acres.

ii) In consideration of granting development rights on said Land, the appellant (being Landowner No.1) is entitled to fixed percentage of net revenue share of 26.323% and the Landowner No.2 is entitled to net revenue share of 4.677%, both aggregating 31%, as and when the Developer receives amounts in the designated Escrow Bank Collection Accounts opened by the Developer, as per payment schedules on sale of Flats to the buyers. The Landowners were neither entitled to any flats nor share in built up area from the said development.

iii) In terms of said JDA, the Developer had to execute and complete the project during a period of 8 years from the date of its commencement.

iv) The Developer is doing the entire development and construction of Parkwest project on the said Land at their own cost and resources.

19.7 The appellant has not done any development or improvements on the Binnypet Land right from its receipt as capital contribution till said Land was given for development to Developer under JDA and also thereafter.

(a) Year-wise break up of Binnypet Land Cost and Capital WIP appearing in the Balance-sheet of the appellant is given below

1. Closing balance of Land Cost and Capital WIP of Binnypet Land in prior years before adjustment of cost of acquisition

Financial Years (Amount in Rupees)

Particulars	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013	2013-2014
Schedule - Fixed Assets/ Capital – WIP						
Binnypet Land - cost	2,99,13,300	2,99,13,300	4,34,61,326	4,34,61,326	4,34,61,326	4,34,61,326
Other Expenses capitalized	51,37,944	51,37,944	81,29,023	1,22,71,398	1,22,71,398	1,22,71,398
Closing balance as on 31st March	3,50,51,244	3,50,51,244	5,15,90,349	5,57,32,724	5,57,32,724	5,57,32,724

2. Closing balance of Land cost and WIP after adjustment of proportionate cost of acquisition against LTCG offered to tax in its ITRs

Financial Years (Amount in Rupees)

Particulars	2014-2015	2015-2016	2016-2017	2017-2018	2018-2019	2019-2020
Schedule - Fixed Assets/ Capital – WIP						
Binnypet Land	4,13,14.772	3,78,80,083	3,36,92,257	3,10,80,710	2,79,17,432	0
Other Expenses	1,16,65,314	1,06,95,522	95,13,080	87,75,704	43,88,852	0
Total	**5,29,80,086**	**4,85,75,605**	**4,32,05,337**	**3,98,56,414**	**3,23,06,284**	

b) Year-wise Break up of nature of Other expenses amounting to Rs.1,22,71,398/- shown in the above table debited to Capital work-in progress

(i) **As given in the above statement, the appellant has incurred a total expenses of Rs. 1,22,71,398/- during the period 1-7-2008 to 30-9-2011 and debited the same to Capital Work-in Progress. The year-wise break up of the nature of said expenses booked under Capital work in Progress is given below:**-

Financial Year	Professional charges paid to Consultants	Fees & taxes, paid	Security Charges paid	Other Expenses, such as rent travelling & misc. expenses	Total expenses capitalized
2008-2009	47,04,841	2,79,598	0	1,53,505	51,37,944
2009-2010	0	0	0	0	0
2010-2011	10,75,923	5,59,364	12,20,833	1,34,959	29,91,079
2011-2012	40,53,526	1,300	0	87,549	41,42,375
Total	**98,34,290**	**8,40,262**	**12,20,833**	**3,76,013**	**1,22,71,398**

(ii) All above mentioned expenses were capitalized and debited to Capital work-in-progress relating to Binnypet Land. Once the Land is given (by way of License) to the Developer for doing development pursuant to JDA 28-3-2011, the appellant had not incurred any expenses and debited to Capital WIP.

19.8 The appellant has never treated the Binnypet land as stock-in-trade nor done any activity or spend expenditure towards development or improvement of Land as alleged in the impugned revision order.

i) From the above facts, it is very clear that the appellant except spending on some professional charges of Rs. 47,04,841/- paid to Consultants in the first year FY 2008-2009 to explore the feasibility & viability of starting an

Infopark project on said Land and in FYs 2010-11and in 2011-12 on some professional charges of Rs.51,29,449/- paid to Consultants for seeking advisory services while entering into JDA with a Developer, **no expenses on development or improvement of Land, etc. were incurred by the appellant.**

ii) The appellant had given bare undeveloped Land to the Developer for development.

iii) When the appellant had received income from JDA during FYs 2014-15 to FY 2018-19, while offering the said income as LTCG in its ITR, it had claimed cost of land and aforementioned expenses debited to Capital WIP till 30-9-2011 proportionately as cost of acquisition.

iv) During FY2019-20, when the appellant had sold balance unsold/undeveloped UDS to the Developer vide Agreement of Sale dated 27-5-2019, the remaining unclaimed cost of Land and other capitalized expenses totaling Rs.3.24 Crores were claimed as cost of acquisition against LTCG.

v) Further, the appellant has never indulged in any real estate activities, such as trading and developing the Land for sale. The appellant had contributed the sole Land at Binnypet owned by it in a JDA for development by a Developer against receipt of revenue share.

vi) **Therefore, the observations given by the learned Pr.CIT in para-17 of the impugned order that the appellant has treated the Binnypet Land as stock-in-trade is incorrect and based on wrong assumption of facts. Moreover, in its every Balance-sheet, the said Land was shown as Fixed Asset/Capital WIP and the appellant has neither treated the said Land as stock-in-trade nor done any activities or improvement /development on said Land by itself.**

19.9 Appellant's submissions to the covenants contained in the JDA dated 28-3-2011, as pointed out by the learned Pr.CIT in first part of para-17 of the revision order to prove that the appellant is not a mere Land owner but actively engaged in the development of Lands.

(a) Learned Pr.CIT's observations that "intention of assessee-firm while entering into JDA dated 28-3-2011 was to exploit commercial

use" referring to development of a Shopping Mall on Schedule-D Property owned by second Landowner through Co-Developer.

i) The Land measuring 5.7939 acres owned by second Landowner where commercial development, i.e. construction of Shopping Mall was proposed under Master Plan dated 2-8-2010 obtained from Bangalore Development Authority for total Land measuring 52.8337 Acres (47.04 acres for residential + 5.7939 acres for commercial development), was described in Schedule-D of the JDA dated 28-3-2011 and was excluded from the JDA dated 28-3-2011 for residential development.

ii) In the recital clause of said JDA, it has been clearly mentioned that the above Schedule-D property is not a part of this JDA **(Page Nos. 249-315 of Paper Book No.1).**

iii) It appears that the learned Pr.CIT has misread the recital clauses contained in the said JDA and thought commercial development on Schedule D property as part of JDA dated 28-3-2011.

(b) Learned Pr.CIT's observations referring to definition of 'Net Revenue" given in the JDA dt 28-3-2011

i) In the JDA appellant and second Landowner is receiving 31% of Net revenue generated from the development and not built up area constructed by the Developer.

ii) Therefore, in the definition of Net revenue, apart from proceeds of sale of the residential units, it is common to cover all other potential revenues , such as income from lease of residential, if unsold and let out, income received from allotment of car parking spaces, receipts of non-refundable deposit towards club memberships, charged received in relation to infrastructure and any other charges, etc.

iii) These sources of income are included in the definition of "Net revenue" to maximize its appellant's revenue entitlement in terms of JDA, otherwise the entire benefit will accrue to the Developer.

iv) But this does not mean that the appellant is actively engaged in the exploitation of commercial use of Land, which is done by the Developer.

v) However, for present AY 2020-21, the said revenue share is not at all relevant as the appellant has exited from the JDA and received full sale consideration from the Developer for sale of undeveloped undivided share of Land available in the said project directly to them.

(c) Learned Pr.CIT's observations that "Project yields at least the Minimum Average Net Revenue in respect of the land owner's share, over life time of the project."

i) In the definition clauses given in JDA, the definition of "Minimum Average Rate" is given "*which shall be Rs.4,800/- per sq.ft. of Saleable Area reckoned at the end of 8 years as detailed in clause-8."* n).

ii) In terms of clause-8(b).2 of JDA, the Developer is required to achieve minimum average rate of Rs.4,800/- per sq.ft to which Landowners are entitled at the end of 8th year and in case of shortfall, the Developer has to make good of the shortfall.

iii) In the above context, under heading Obligations of the Developer at clause 4.1.h. in the JDA, it has been mentioned that " *The Developer has the obligation that the Project yields to the Landowners at least the Minimum Average Net Revenue (i.e. Rs.4800 x total saleable area) in respect of the commercial exploitation of the Landowner share, over the lifetime of the Project (i.e. during 8 years period).*

i**v) These clauses indicates that irrespective of successful completion of the project/ development or not, the Landowners have been assured to receive minimum consideration from the development to the extent of 31% of the total saleable area at the end of 8th year, failing which the Developer shall make good of the short fall in minimum consideration.**

(d) Learned Pr.CIT's observations that Landowners to assist the developer to amend the block development plan for the Project Land.

i) Under heading Obligations of the Landowners in clause 4.2.n. of the JDA, it is mentioned that "*The Landowners will make its best efforts and*

assist the Developer to amend the block development plan for the Project Land to reduce the open space and park area of not more than 5.28 acres (first modification) within 4 months from signing of this Agreement.

ii) *Any time take by the Developer for securing such first modification of the Development Plan from the BDA shall result in extending the time limit applicable, provided that such extension shall not under any circumstances exceed 6 months. All costs and expenses in respect of such modification shall be borne by the Developer the beyond 4 months period stated above."*

iii) Since the Lands given under JDA are owned by the appellant and second Landowner, the Developer needs the relevant details for making applications to be submitted to Regulatory Authority (BDA) and copies of previous Plan sanctions obtained, etc.

iv) But the entire work relating to obtaining the amended Plan sanction has to be done by the Developer at their own cost and not by the Landowners (appellant),

(e) Learned Pr.CIT's Observations regarding Non-compete clause with the Developer mentioned in clause no.10.1 of JDA to prove that the appellant is engaged in development of plots.

i) In the revision order, the learned Pr.CIT has stated that the appellant had entered into Non-compete clause with the Developer at clause no.10.1 of JDA **(Page Nos. 249-319 of Paper Book No.1)** and in that context, he is referring to Annexure-6 attached to said JDA.

ii) The appellant submits that the appellant owns only one Land parcel measuring 42 acres in Binnypet and the same was given into JDA for residential development by the Developer and the Non-competing clause is not meant/applicable for the appellant.

iii) The said Non-compete clause is applicable to the nearby properties owned by the second Landowner.

iv) It appears that the learned Pr.CIT has misunderstood the said clause 10.1 and Annexure-6 contained in the JDA so as to prove that the appellant is actively engaged in development of plots and is not of a general landowner.

(f) Learned Pr.CIT's observation that *"Thus the assessee had not held the Land for investment and instead the same was treated as stock-in-trade whose value kept on varying each year, which is corroborated by the fact that in closing stock or stock-in-trade, the valuation is always as per the market price or the cost price whichever is lower."*

i) The appellant submits that it has not done any development or improvements on the Binnypet Land right from its receipt as capital contribution till the said Land was given for development to Developer under JDA and also thereafter.

ii) The appellant has never treated the Binnypet land as stock-in-trade nor done any activity or spend any expenditure towards development or improvement of Land as stated by the learned Pr.CIT.

iii) The appellant is showing the Binnypet Land under heading Fixed Assets/ Capital Work-in-progress in its Books of accounts from inception.

iv) The appellant has incurred some expenses towards professional charges paid to various Consultants and accounted the same in the Books as Capital work-in-progress till FY 2011-12, when the Land was given to the Developer under JDA.

v) When the appellant started receiving income from Parkwest project under JDA during FYs 2014-15 to 2018-19, the appellant has debited the proportionate cost of acquisition worked out against the said LTCG and accordingly the cost of land and other expenses was decreased to that extent during said FYs.

vi) When the appellant sold balance unsold/ undeveloped UDS to the Developer vide Agreement of Sale dated 27-5-2019, the remaining cost of Land & Capital WIP of Rs.3,57,99,978/- as on 31-3-2019 was claimed as cost acquisition against the income received from said sale.

vii) It appears that the learned Pr.CIT misunderstood the decrease/ variations in Capital work in progress relating to Binnypet Land during FYs 2014-15 to 2019-20 as he thought that the appellant had accounted the said Land/Capital WIP as per Accounting Standard-2 applicable to Stock-in-trade, i.e. at cost or market value, whichever is lower. Based on this

perception, the learned Pr.CIT is believing that the appellant has treated the said Land as stock-in-trade and not as capital asset, which is incorrect.

19.10 An assessee is entitled in law to hold same class of assets as Capital assets even while it is dealing with assets of similar type in business with the idea of commercial exploitations.

i) Without prejudice to the facts of the appellant and contentions, as stated in paras-16.a) to i) herein above, **the appellant submits that in view of section 2(14) of the Act and as confirmed by CBDT in its Circular No.4 dated 15-6-2007, that an assessee is entitled to hold same class of assets as investment and stock-in-trade simultaneously.**

ii) Section 2(14) of the Act defines that " Capital Asset" , which means property of any kind held by an assesee whether or not connrected with his business or profession, but does not include stock-in-trade, etc. Therefore, an assessee is entitled in law to hold certain class of assets as capital assets even while he is dealing with the asset of similar type in business with idea of commercial exploitations.

iii) In **Circular No.4 of 2007 dated 15-6-2007 issued by CBDT (Page No.511-512 of Case Law Compilation No.2)** in the context of trading in shares, it has been clearly mentioned that an assessee can hold the same class of assets as investment and also stock-in-trade simultaneously.

19.11 Case laws holding that an assessee can hold same class of assets as investment and stock-in-trade simultaneously.

In support of its above contention, the appellant place reliance on following case laws, wherein it has been held that an assessee can hold the same class of assets as investment and also as stock-in-trade simultaneously. The views expressed by CBDT in their circular no.4 of 2007 dated 15-6-2007 has also been upheld by the Courts/Tribunals in the following cases:-

(a) Case laws of Hon'ble Supreme Court

(1) **Supreme Court dismissed Revenue's SLP challenging the Bombay High Court judgement inPCIT vs Jogani & Dialani Land Developers & Builders (2020) taxmann.com 140 (SC) (Page Nos. 513-515 of Case Law Compilation No.2)**

(2) **Supreme Court in CIT vs Madan Gopal Radhey Lal (1969) 73 ITR 652 (SC) (Page Nos 516-520 of Case Law Compilation No.2)**

(b) Case laws of Hon'ble ITATs

(3) ITAT, Bangalore in Thirumala Venkateshwara Estates and Agencies vs Dy.CIT in ITA No.553/Bang/2010 dated 28-07-2010. (Page Nos. 521-541 of Case Law Compilation No.2)

(4) ITAT, Ahmedabad in DCIT vs Shri Niketan Krishorchandra Patel in ITA No.3682/Ahd/2015 dated 25.7.2019. (Page Nos. 542-553 of Case Law Compilation No.2)

20.1 Observations made by the learned Pr.CIT in the impugned revision order on JDA dated 21-3-2021 entered into by the appellant for contributing the Binnypet Land for residential development and treating said JDA as 'adventure in nature of trade'.

In the revision order dated 24-3-2025, the learned Pr.CIT has made certain additional observations on the Joint Development Agreement (JDA) dated 28-3-2011 entered into with the Developer/Purchaser, M/s. Relationship Properties Pvt. Ltd. (RPPL) for development of Binnypet Land contributed by the appellant for a residential project. The learned Pr.CIT is of the opinion that looking to certain covenants, the said JDA is 'adventure in nature of trade' and hence the income received from sale of balance undeveloped UDS available in the said project, directly to the Developer, pursuant to registered Agreement of Sale dated 27-5-2019 ought to have been treated as sale of stock-in-trade and said income should have been taxed as Income from business not as LTCG.

20.2 Appellant's detailed objections against treating JDA as 'adventure in the nature of trade' is mentioned in Hon'ble ITAT Order dated 2-9-2022 in appellant's case

It is submitted that appellant's detailed objections against treating the JDA is 'adventure in the nature of trade' by learned Pr.CIT in his previous revision orders dated 18-3-2020 for AY 2015-16 and dated 30-3-2021 for AY 2016-17 was considered by the hon'ble Tribunal, Bangalore in their

Order dated 2-9-2022 and the same are reproduced therein. Hence, the same are not repeated here, but only important points are highlighted below. The said judgment is annexed to Page Nos. 1 to 73 of Case Law Compilation No.1.

20.3Developer was doing the development and construction activities on the Binnypet Land contributed by the appellant into JDA initially.

i) The appellant, being a Landowner had just contributed the said Land for development by the Developer and had neither involved/interfered in the project activities in any manner nor has a right to do so.

ii) In terms of JDA, the Developer had to do the entire development and construction of the project at their own cost and resources.

iii) All the activities relating to the project, such as obtaining Plan sanctions and other approvals from various Government Authorities, planning & execution of development & construction of the project, formulating marketing strategies, pricing & sales promotional activities, selling of flats to prospective buyers, collecting receivables from flat buyers as per payment schedules, arranging of funds & other resources for development and construction of project, etc were done by the Developer alone.

iv) Except the right to receive agreed revenue share through designated Escrow Bank Accounts towards consideration for Land contribution, the appellant had no role, right, responsibility, accountability, liability in the said Project.

20.4 Realisation mechanism of revenue share as stipulated in the JDA is capital gains and not business income

i) **In the above context, the appellant submits that in FAQ issued by CBDT on Joint Development Agreements (JDA), it is clearly stated that –**

"In JDA, the Landowner may get monetary or non-monetary consideration from the Developer for contributing his land to the project. Monetary consideration can be a share in the sale

consideration of the project and non-monetary consideration means a specified share in the developed estate."

ii) In support of above arrangement of receipt of revenue share on deferred basis from the JDA through Escrow Bank Account mechanism, the appellant wish to place reliance on following decisions of Hon'ble ITAT, Bangalore and ITAT, Hyderabad:-

(1) ITAT, Bangalore in Dy.CIT vs Sri Vinod Narappa Reddy in ITA No.1853 to 1855/Bang/2018 dated 5-10-2020. (Page Nos. 542-553 of Case Law Compilation No.2)

(2) ITAT, Hyderabad in ITO vs G. Vijayasimha Reddy in ITA No.374 to 376/Hyd/2023 dated 5-1-2024. (Page Nos. 564-590 of Case Law Compilation No.2).

The Hon'ble ITAT, Hyderabad has followed the decision of Hon'ble ITAT, Bangalore in case of Vinod Narapa Reddy supra and held that the receipt of revenue share from JDA is capital gains.

20.5Presentation of income from sale of assets as direct income in Schedule-8 attached to Statement of Income and Expenditure but under the head "Other Income" in the main Statement of Income & Expenditure for FYs 2015-16 and 2016-17. However income is reported correctly in the relevant ITRs.

i) No standard format has been prescribed for Partnership Firm and other non-incorporate bodies till FY 2023-24 by ICAI, like Companies under Companies Act,2013. Audit Report is not all required.

ii) However, the balance cost of capital asset (after deduction of proportionate cost of acquisition) was shown correctly as "Binnypet Land" in Schedule No.6 under heading

"Capital Work-in-progress" in the Balance-sheets for FY 2015-16 and 2016-17.

iii) **In this regard, the appellant submits that any treatment of taxability of income reported in the Statement of Income and Expenditure/ Statement of Profit and Loss, is not dependent on how it is reflected therein but on the true nature and source of such income. It is submitted that the entries in the books of financial**

statements do not fasten the tax liability and the tax liability is based on the provisions of the Act independent of the manner of presentation in the financial statements.

iv) Observations of Hon'ble Supreme Court in Kedarnath Jute Manufacturing Co. Ltd. on entry appearing in books of account:

In the above context, the appellant wish to place reliance on the decisions of the **Hon'ble Supreme Court in Kedarnath Jute Manufacturing Co.Ltd. vs CIT (1971) 82 ITR 363 (SC) (Page Nos. 591-594 of Case Law Compilation No.2)** wherein, the Hon'ble Supreme Court has observed that " ***whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter***."

20.6 Claiming General & Establishment Expenses claimed in the Return of Income by the appellant does not construe the fact that intention of the appellant was to conduct business by entering into a JDA.

As regards learned Pr.CIT's observation in para-6 of the revision order that the assessee had claimed certain business expenditure in the return of income of previous FYs, which shows the intention of the assessee was to conduct business by entering into the development agreement dated 28-3-2011, the appellant wish to submit as under:-

i)The appellant has claimed only General & Administrative expenses as set off u/s 71(2) of the I.T.Act in previous years, which were disallowed by learned AOs in scrutiny assessments on the ground that appellant has no business income and NIL business activities during the relevant previous years.

ii) All these expenses are revenue in nature and are incurred to keep its legal existence alive, to maintain its establishment & to facilitate smooth conduct of its activities.

iii) The appellant has not incurred any business expenses pertaining to any business activities in any previous years.

iv) Hence the observations of the learned Pr.CIT that the appellant has claimed certain business expenditure in its Return of Income in previous years is factually incorrect.

20.7Case laws relied on by learned Pr.CIT to consider the JDA dated 28-3-2011 is adventure in the nature of trade which are distinguishable to the facts of the appellant case. But not invoked clause (d) to Explanation-2 of Section 263 of the Act in para-19 of the impugned Revision Order.

a) Hon'ble Supreme Court decision in case of Raja J Rameshwar Rao vs CIT

i) The learned Pr.CIT, in the revision order, relied on the decision of the Hon'ble Supreme Court in the case of **Raja J. Rameshwar Rao v. CIT 42 ITR 179 (SC)** and came to the conclusion that the appellant case is that of adventure in the nature of trade.

ii) The appellant states that the facts of the case relied upon by the learned Pr. CIT are entirely different and are not comparable, to the extent that in the case cited by the learned Pr. CIT, the assessee developed plots by itself and sold in order to earn higher income and thus carried on activities that of business, undertaking all risks and rewards, responsibilities and obligations as that of a businessman but did not include the said receipts as income from business.

iii) The assessing officer made addition, treating the sale of divided plots after developing the area to make it more attractive and treating the land as stock in trade *"as an adventure in the nature of trade".*

b) Hon'ble Karnataka High Court decision in cases of CIT vs Ramaiah & CIT vs P.Kannan

i) The appellant further submits that the decisions relied upon by the learned Pr.CIT in the case of **CIT v. Ramaiah and Others 146 ITR 39 (Karnataka)** is again as that of sale of building sites after converting agricultural lands into multiple plots. The assessee went on selling the plots year after year realising more and more profits.

ii) In the case of **CIT v. P. Kannan 154 ITR 441 (Karnataka),** the assessee was a building contractor, and he divided the land into plots and sold the plots immediately after purchase of land.

iii) Therefore, the facts of both cases are not comparable to the facts and circumstances of the case of the appellant.

The appellant wish to place reliance on following case laws in support of its above contention:-

20.8Case laws wherein it was held that either receipt of revenue share from JDA towards contribution of Land or income from sale of built up area share received from JDA by a Landowner is Capital gains and not business income arising from adventure in the nature of trade.

a) **Case laws decided by Hon'ble Karnataka High Court**

(1) CIT vs Razia Sulaiman in ITA No.412 of 2007 dated 19-9-2011 - (Page Nos. 595-598 of Case Law Compilation No.2)

(2) CIT vs Smt. Suparna Mahesh in ITA No.3231 of 2005 dated 8-2-2011 -(Page Nos. 599-605 of Case Law Compilation No.2)

b) Case laws decide by Hon'ble ITAT, Bangalore

(3) Dy.CIT vs Sri Muppala Bhaskar Reddy in ITA No.909/Bang/2019 dated 4-4-2022) - **(Page Nos. 606-620 of Case Law Compilation No.2)**

c) **Case laws decided other Hon'ble High Courts**

(4) PCIT vs Rungta Properties Pvt. Ltd – (2017) 83 taxmann.com 106 (Calcutta) - (Page Nos. 621-628 of Case Law Compilation No.2)

(5) CIT vs Machino Techno Sales Ltd. (2023) 151 taxmann.com 409 (Calcutta) (Page Nos 629-631 of Case Law Compilation No.2)

d) **Case laws decided by other Hon'ble Tribunals**

(6) ITO vs Sitaram Chamaria (2006) 6 SOT 594 (Mumbai)- (Page Nos. 632-635 of Case Law Compilation No.2)

20.11Case Laws wherein it was held that sale of Land after development is Capital gains and not income from business arising from adventure in the nature of trade.

a) Case laws decided by Hon'ble Karnataka High Court

(1) CIT vs M/s Bagmane Developers Pvt. Ltd. in ITA No.157/2011 dated 2-9-2016 - (Page Nos. 636-668 of Case Law Compilation No.2)

(2) CIT vs M/s. Kishan House in ITA No.326/2010 dated 29-1-2020 (Page Nos. 669-680 of Case Law Compilation No.2)

(b) **Case laws decided by other Hon'ble High Courts**

(3)CIT vs Kasturi Estates Pvt. Ltd. (1966) 62 ITR 578 (Mad) - (Page Nos. 681-691 of Case Law Compilation No.2)

(4) CIT vs MLM Mahalingam Chettiar (1977) 107 ITR 236 (Mad) – (Page Nos. 692-694 of Case Law Compilation No.2)

(5) CIT vs Suresh Chand Goyal (2007) 163 Taxman 54 (MP) – (Page Nos. 695-698 of Case Law Compilation No.2)

(c) Case laws decided by other Hon'ble Tribunals

(6) ITAT Ahmedabad in DCIT vs Shri Nandlal Jaigopal Agarwal in ITA No.2534/Ahd/2015 dated 14-11-2018 – (Page Nos. 872-892 of Case Law Compilation No.3)

21. Revised Grounds of Appeal No.18

Learned Pr.CIT erred in disregarding the decision of Hon'ble Bench of ITAT, Bangalore dated 2-09-2022 for AYs 2015-16 and 2016-17 in case of the appellant holding the same Land contributed under JDA dated 28-3-2011 is Capital asset and income received from said JDA is taxable as Capital gains and not as Income from Business as held by his predecessor in earlier revision orders dated 18-3-2020 and 30-3-2021.

21.1. The appellant submits that in the case of appellant for AYs 2015-16 and 2016-17, the Hon'ble bench of ITAT, Bangalore vide its Order dated 2-9-2022 (Page Nos. 1-73 of Case Law Compilation No.1) has held that the Binnypet Land contributed by the appellant under JDA dated 28-3-2011 is Capital asset and income received from said JDA is taxable is taxable as Capital gains and not as Income from Business as held by the learned Pr.CIT-1, Bangalore in his earlier revision orders dated 18-3-2020 and 30-3-2021. The appellant invite the kind reference to Paras Nos.7.4, 7.5 and 7.19 of the aforesaid Order dated 2-9-2022 on the findings given by this Hon'ble Tribunal in the appellant's own case.

22. Issue No.7 : Additional Grounds of Appeal –

Audit Objections cannot be a basis of revision of assessment orders under section 263 of the Act.

22.1 The appellant submits that the learned PCIT has invoked the revision proceedings under section 263 of the Act based on the audit objections and not on suo-moto discretion. The appellant puts the respondent to strict proof to establish that the proceedings are not initiated on the basis of audit objections. The appellant is of the view that the audit objection cannot be a basis of revision of assessment orders.

22.2 The appellant places reliance on the following case laws in support of the above views of the appellant:-

(1) CIT v. Sohana Woollen Mills, [2008] 296 ITR 238 (Punjab& Haryana) – (Page Nos. 699-701 of Case Law Compilation No.2)

(2) Jaswinder Singh vs CIT (2013) 31 taxmann.com 80 (Chandigarh - Trib)
(Page Nos. 702 -711 of Case Law Compilation No.2)

(3) Pinkcity Jewelhouse Pvt. Ltd. vs Pr.CIT in ITA No.63/JP/2021 dated 7-3-2024 (Jaipur Tribunal) (Page No.712-759 of Case Law Compilation No.2)

(4) Majestic Properties Pvt. Ltd. vs Pr.CIT, in ITA No.3088/Del./2018 dated 10-08-2023 (Delhi Tribunal) (Page No.760-765 of Case Law Compilation No.2)

(5) Ahlcon Parenterals (India) Ltd. (2024) 152 taxmann.com 759 (Delhi – Trib)
(Page No.766-769 of Case Law Compilation No.2)
(6) Shanmuganathan Rajasekaran vs Pr.CIT in ITA No.1897/Chny/2025 dated 31.10.2025 (Chennai Tribunal) (Page No.893-911 of Case Law Compilation No.3)

In view of the above submissions,the Appellant humbly prays before this Hon'ble Tribunal to allow the appeal filed by the appellant for the advancement of the substantial cause of justice.

Place : **Bengaluru**

Date : **23-02-2026** **APPELLANT**

8.3 Further, the assessee has submitted the written submissions in response to the submissions made by the revenue dated 25.6.2026, which are as follows:

BEFORE THE HON'BLE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU 'A' BENCH, BANGALORE.

Name & Address of the Appellant	**M/s ETA Star Infopark** No. 501, 502, Front Wing, 5th Floor, North Block, Manipal Center, 120, Dickenson Road, Bengaluru 560042.
PAN	AACFE6010C
Assessment Year	**2020-21**
Order appealed against passed by	**Order under section 263 of the Income-tax Act, 1961 ("the Act") dated 24/03/2025 passed by learned Principal Commissioner of Income-tax, Bangalore-1, Bangalore.**
ITA No.	**1194/BANG/2025**

Appellant's Response to Written Submissions dated 25-06-2026 filed by the Revenue (herein after referred to as "RWS")

The appellant, in continuation to its Written Submissions dated 23-02-2026 (hereinafter referred to as **"AWS-1"**), filed before the Honourable Tribunal on 24-02-2026, in support of the revised Grounds of Appeal and also its Additional Written Submissions dated 25-06-2026 pursuant to the hearing held on 15-06-2026, filed before the Honourable Tribunal on 25-06-2026, (hereinafter referred to as **"AWS-2"**), is making following submissions on the points and analyses made by the learned Departmental Representative (DR) in the RWS, filed before the Honourable Tribunal on 25-06-2026, for kind consideration of the Honourable Tribunal:-

The appellant submit below its detailed submissions/ clarifications/ explanations on the facts of the case as highlighted by the learned DR in the Revenue's Written Submissions (RWS) for kind consideration of the Honourable Tribunal:

Appellant's Reply to I. Introduction and Background given in the RWS dated 25-6-2026

1. Reply to 1.3 The Defects and the Revision .

* I**n para 1.3 of the RWS,** the learned DR has stated that the original assessment order dated 29-09-2022 has recorded no finding at all in respect of three key matters (a) whether the Agreement was a valid "transfer" under section 2(47) ; (b) the correct head of income and (c) whether the BHN Foods payment was genuine. The only addition made was Rs.72,22,280/- for business expense disallowance. The learned Pr.CIT therefore set aside the assessment order under Explanation 2(a) to Section 263 (Para-19 of the Revision Order) and ordered a fresh assessment (Conclusion and Directions).

* Since the above mentioned points have been reiterated by the learned DR under heading IV. Reply to the Grounds of Appeal under sub-headings A to F, the appellant submits its detailed reply covering all the contentions of the learned DR herein below, for kind consideration of the Honourable Tribunal:-

IV. Reply to the Grounds of Appeal given in the RWS dated 25-6-2026

Appellant's Reply to IV.A. Jurisdiction
– a silent order is not saved by 'complete scrutiny' (Grounds 1-8) mentioned in RWS.

2. Appellant's Reply to No finding on the key issue – The learned DR has stated that the assessment order (Pages 42-47 of the Appeal Memo) does not contain a single line on section 2(47), Clause 13, the stamp-duty point or the head of Income.

The appellant's submissions to the above point is as follows:-

* The appellant in its response dated 19-8-2022 (page nos. 115-143 of Paper Book No.1), to query no.8(c) of Notice u/s 142(1) dated 3-08-2022 (page nos.109-114 of Paper Book No.1) has furnished a copy of the registered Agreement of Sale without Possession dated 27-05-2019 (hereinafter referred to as "the Agreement of Sale") for consideration of the learned AO. The appellant submits that the Agreement of Saleis a comprehensive one bestowing bundle of absolute rights and benefits (except legal possession) in favour of the Purchaser for its enjoyment as an apparent/ beneficial owner of the Property sold by the appellant and not a mere contract of sale without transfer of ownership under common law parlance.

* The appellant submits that the appellant (Sellers) on receipt of full sale consideration have parted with predominant and substantial rights, such as all its rights, powers, benefits, economic interest, entitlements, development rights, etc accruing to the Land (UDS) sold except the legal possession and empty husk of the title. The appellant (Sellers) have relinquished and/or extinguished all such rights on the Land sold in favour of the Purchaser and consequently all its rights on said Land including the right of conveyance and specific performance of the said Agreement have been extinguished from the date of registration said Agreement of Sale dated 27-5-2019 and registered on 20-6-2019. The Sellers have also extended the operations of two Power of Attorneys granted in favour of the Developer at the time of entering into JDA.

* In terms of section 2(14) of the IT Act a capital asset means property of any kind held by an assessee, whether or not connected with his business or profession and as per explanation given therein the property includes and shall be deemed to have always included any rights therein. Therefore, the appellant submits that on receipt of full sale consideration and on extinguishment of most of the rights attached to the Land sold in favour of the Purchaser, the said Agreement of Sale is purely a transfer of capital asset and the same falls under sub-clauses (i) and (ii) of section 2(47) of the I.T.Act,1961. Further **Explanation-2 to section 2(47)** of the Act says that " *For the removal of doubts, it is hereby clarified that* ***"transfer" includes and shall be deemed to have always included disposing of or parting with an asset or any interest therein,*** *or creating any interest in any asset in any*

*manner whatsoever, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered into India or outside India) or otherwise ……."*Moreover as per definition of transfer given under **section-269-UA(f)(ii)** of the Act **includes any rights in or with respect to any land or any building or a part of building which has the effect of transferring or enabling the enjoyment of such property.**

***** The appellant in AWS-1 dated 23-2-2026 in support of Revised Grounds of Appeal Nos.12,14 & 15 under heading Issue No.5 (at page nos.30-48) has given detailed submissions, explaining the reasons for not executing the sale deed, mentioning the nomenclature of "Agreement of Sale without Possession" and the insertion of clause-13 regarding no legal possession to facilitate the Purchaser to save substantial stamp duty, and other various clauses granting absolute rights in favour of the Purchaser against receipt of full sale consideration, extinguishment of all the rights on the property sold (except legal possession), etc. In support of the above mentioned views, the appellant has relied upon several case laws decided by Honourable Supreme Court, Karnataka HC and other High Courts and ITATs at para no.17.4 of the AWS-1 dated 23-2-2026 (page nos.45 and 46) for kind consideration of the Honourable Tribunal.

* From the foregoing, it appears that on scrutiny of the Agreement of Sale, learned AO came to the conclusion that the registered Agreement of Sale is transfer of a capital asset within the meaning of section 2(47)(i) and (ii) of the Act and the sale consideration is taxable under head Capital gains and hence he accepted the income offered by the appellant as LTCG.

* The appellant believes that the ingredients of transfer of a capital asset as defined under section 2(47) of the IT Act and those given under section 54 of the Transfer of Property Act,1882 to treat a transfer of ownership of an immovable property by way of sale is quite different. The appellant further believes that many of the observations given by the learned Pr.CIT in the Notice issued u/s 263 dated 23-1-2025 and in later part of Para-17 of the Revision Order relating to Agreement of Sale and the ingredients for transfer of ownership of an immovable property in

case of sale, relates to requirements under Common Laws and Transfer of Property Act,1882 in particular.

* The above stand of the learned AO of NeFAC is vindicated again, in the course of fresh assessment proceedings pursuant to directions of the learned Pr.CIT in the Revision Order that despite clear cut instructions from the learned Pr.CIT to find out whether the sale consideration is taxable under head Income from Other Sources on the ground that there is no transfer u/s 2(47) of the Act, the learned AO has neither raised any query in his Notice u/s 142(1) dated 19-01-2026 (copy of said Notice is filed by the appellant along with its AWS-2 ,at page no. 26-29 on 25-06-2026 before the Honourable Tribunal) nor conducted any further inquiry on the said issue. The learned AO, after examining the copies of the Agreement of Sale, JDA dated 28-03-2011 and copies of all Partnership Deeds of the appellant Firm, furnished to them by the appellant vide its response dated 29-01-2026 to the aforesaid Notice, has decided to tax the sale consideration under head Income from Business and not under head Income from Other Sources.

3. Appellant's reply to Asking for documents is not inquiry – Queries 5-8 of the 142(1) Notice dated 3-8-2022 (page 109-114 of PB-1) only sought copies and figures. Collecting papers is not the same as examining the law.

The appelllant's submissions to above point is as follows:-

* The appellant in its AWS-1 dated 23-2-2026 (at page nos.6 to 17) under heading Issue No.1 – Grounds on invoking the provisions of section 263 of the Act by the learned Pr.CIT-1, Bangalore are without jurisdiction (Revised Grounds of Appeal Nos.1 to 8) has given submissions at length to prove that the exercise of revisionary powers under section 263 of the Act by the learned Pr.CIT in the appellant case is without jurisdiction. At para no.13 of AWS-1 dated 23-2-2026 (at page no.20-22), the appellant has relied upon various case laws in support of its contentions. The Honourable Tribunal is requested to kindly consider the said submissions.

* Further, in the Notice u/s 142(1) dated 3-8-2022, at query No.7 the learned AO has asked the appellant to provide detailed computation of the LTCG shown by the assessee during the year under consideration along with detailed note on the nature of transaction which has been claimed as transfer of long-term capital asset. In its response dated 19-8-2022, the appellant has furnished computation of Long-term Capital gains and given a detailed note on the nature of transaction (Page Nos. 115-143 of Paper Book No.1). In the said note, the appellant has explained the execution of JDA dated 28-3-2011 with the Developer and contribution of 42 acres of Land owned by the appellant for development of a residential project, namely – Parkwest against receiving 26.32% revenue share by the appellant from the Parkwest project in terms of JDA, receipt of revenue share during the FYs 2014-15 to 2018-19 from Phases – 1 and 2 of the said project, and offering of the said income as LTCG during the AYs 2015-16 to 2019-20 as the same was received for sale of UDS in the said project, reasons for sale of balance undeveloped UDS to the extent of 6,42,790.53 sq.ft. to the Developer on account of considerable delay in execution of the Parkwest project, execution of Agreement of Sale without Possession dated 27-5-2019 and receipt of full sale consideration at the time of registration of said Agreement of Sale and offering the said sale consideration of Rs.475.50 Crores to tax as LTCG in its ITR for AY 2020-21, etc. Copy of said Agreement of Sale was also furnished. The learned AO vide queries Nos.8(a) to (e) has asked additional details relating to the capital asset sold, its cost of acquisition, stamp duty value of property sold, etc.

* In response to query no.1 of the Notice dated 3-8-2022, the appellant has furnished a detailed note on the nature of business activity carried out (No business activity and Nil business income), sources of income earned during the year (LTCG & Interest income), description of direct expenses (sales commission paid to BHN Foods) and indirect expenses (General and Admin expenses) incurred during the year.

* The appellant submits that after examination and verification of all the above mentioned details and explanations submitted by the appellant in its responses dated 19-8-2022 (Page Nos.115-143 of Paper Book No.1); dated 14-9-2022 (Page

nos.222-224 of PB Nos.1) and dated 20-9-2022 (Page Nos. 230-245 of PB No.1), the learned AO has accepted the income offered as LTCG and allowed sales commission expenses claimed as deduction u/s 48(i) and disallowed General and admin expenses of Rs.72,22,280 claimed, in its ITR for AY 2020-21 and not mechanically as alleged by the learned DR. In para-2 of the assessment order dated 29-9-2022, the learned AO has given the dates on which he has issued the notices and the responses submitted by the appellant

* Here, the appellant submits that as far as adequacy of inquiry is concerned, there is no law which provides the extent of inquiries to be made by the Assessing Officer. It is the Assessing Officer's prerogative to make inquiry to the extent he feels proper. The learned Pr.CIT by invoking revisionary powers under section 263 cannot impose his own understanding of the extent of inquiry.

4. Appellant's reply to No show cause notice on the Rs.460 Crores issue

* As regards learned DR contention that the learned AO has not given any show cause notice on the taxability of Rs.460 Crores under other heads of income (other than Capital gains), the appellant submits that when the learned AO on scrutiny of the documents and explanations given by the appellant in response to the Notice u/s 142(1) dated 3-8-2022 came to the conclusion that the sale consideration is taxable under head Income from Capital gains, the learned AO has issued the show cause notice dated 17-09-2022 to disallow General and Admin expenses of Rs.72,22,280/- claimed as set off u/s 71(2) in the ITR, on finding that the appellant has neither carried out any business activities nor earned any income from business during the AY 2020-21, on the ground of accounting principle matching concept. Generally, show cause notices are issued after examination of records and on inquiry, when the AO finds that the taxability of income offered under a particular head is unsustainable under the provisions of the IT Act and other claims/ deductions made are not allowable, then he issues the show cause notice conveying his intention to do so asking for the assessee to submit its objections to proposed characterization of income or disallowance of the claim, as the case may be.

* The appellant wish to point out that the learned AO vide query No.3 in the Notice u/s 142(1) dated 3-8-2022 (page no.109-114 of the Paper Book No.1) has specifically asked the details regarding the assessment proceedings carried out for last 5 years (AY 2015-16 to AY 2019-20) including each issues on which addition has been made in the preceding years in a tabular format given in the Notice and also copies of relevant assessment and appellate orders. In its response dated 19-8-2022 (page no.115-143 of Paper Book No.1, the appellant has furnished the requisite details in response to said query. In the tabular format at Sr.No.6 under head B – Fresh assessment orders passed pursuant to directions given in the Revision Order u/s 263 of the Act by learned Pr.CIT-1, the appellant has brought to the notice of the learned AO about the revision orders passed by learned Pr.CIT-1 for AYs 2015-16 and 2016-17 with a direction to AO to tax the income received from JDA as Income from Business in place of Capital gains and the fresh assessment orders u/s 263 dated 29-9-2021 for AY 2015-16 and dated 29-3-2022 for AY 2016-17. The appellant further informed the learned AO that against both Revision Orders, the appeals filed by the appellant was heard by the Honourable ITAT, Bangalore on 6-7-2022 and the decision of the Honourable Tribunal is awaited. On receipt of Honourable Tribunal Orders dated 2-9-2022, the appellant vide its letter dated 14-9-2022 (page nos.222-224) along with revised Annexure to Query No.3 containing the details of assessment proceedings for past 5 years (page nos.225-227 of Paper Book No.1) informed the learned AO about the receipt of said order of the Honourable Tribunal wherein it has been held that the JDA dated 28-3-2011 is not adventure in the nature of trade and income received by the appellant from said JDA is Capital gains and not under head Income from Business. Copies of said order dated 2-9-2022 of the Honourable Tribunal was furnished to the learned AO. The learned AO has taken cognizance of the said decision of Honourable Tribunal and arrived at a definite conclusion that the undeveloped UDS in Binnypet Land sold directly to the Developer by the appellant is capital assets and hence sale consideration received for AY 2020-21 is taxable under head Capital gains and not under head income from Business as observed by the learned Pr.CIT in the previous as well as present Revision Orders. The learned AO has also found that in the scrutiny assessments done for previous AYs 2015-16 to 2018-19, the respective AOs have concluded that the Binnypet Land is a capital

asset and incomes received from JDA dated 28-3-2011 is taxable under head Capital gains and not under head Income from Business. Hence there was no need for the learned AO to explore the possibility of characterisation of said income under any other heads as remarked by the learned Pr.CIT in the impugned Revision Order and there was no requirement for him to issue show cause notice on taxability Rs.460 Crores under any other heads, as contested by the learned DR in the RWS.

5. Appellant's Reply to "Possible view" needs a view. Silent is not a view. The assessee's claim that the AO 'verified the details and came to a conclusion (para 4.3(ii) of AWS-1) is an inference drawn from silence.

The appellant submits as follows:-

* When the learned AO after detailed inquiries observed that income offered in the ITR by the appellant is taxable as LTCG and deduction of sales commission u/s. 48(i) claimed in the ITR are in order and are acceptable, it appears that he thought it proper not to record his findings on these aspects in the assessment order. Whereas the learned AO has decided to disallow the General and Admin expenses claimed by the appellant by way set off u/s 71(2) of the Act in the ITR, after issuance of show cause notice, he has recorded the reasons for the disallowance in the assessment order.

* It is settled position that non-discussion of an issue in the assessment order does not, by itself, makes the order erroneous and prejudicial. This principle recognizes that CIT cannot revise an assessment order under section 263 merely because of non-mention of an issue in the assessment order as it not possible for Assessing Officer to document every aspect of their enquiry or decision-making process in the assessment order itself. Since the appellant does not exercise any control over the drafting of the assessment order, therefore, the record of the assessment must be seen in its entirety to determine whether any inquiry was made or not on the income offered by the appellant in its ITR and the deductions claimed. In this context, the appellant wish to invite the kind reference to Honourable ITAT to the following decisions:-

(i) **Honourable Supreme Court in the case of PCIT vs M/s.V-CON Integrated Solutions Pvt. Ltd., SLP (Civil) Diary No.13205/2025 dated 04.04.2025 (Page No.98 to 99 of Case Law Compilation No.1) wherein it has been clearly stated that "*The assessee does not have control over the pen of the AO. Once the AO carries out the investigation, but does not make any addition, it can be taken that he accepts the plea and stand of the assessee".***

(ii) **Honourable Supreme Court in ACIT vs Marico Ltd (Date of Decision – 1-6-2020,** an SLP arising out of Honourable Bombay High Court decision dated 21-8-2019 relating to change of opinion for reopening of the assessment concurred with the views of Honourable HC given in para-12 of their judgment that **when the queries have been raised by the AO on a particular issue and the assessee has responded to the said queries justifying its stand,** "***the non-rejection of the explanation in the assessment order would amount to the AO accepting the view of the assessee, thus taking a view/ forming an opinion***." The honourable SC has confirmed that the same would amount to a change of opinion and therefore would be completely without jurisdiction.

(iii) **Honourable Supreme Court in JCIT vs Cognizant Technology Solutions India (P.) Ltd, (2023) 452 ITR 224 (SC)**held as follows:-

"2. In view of the findings recorded by the High Court in questions raised and answers given, before, the assessment order under section 143(3) of the Income-tax Act, 1961 was passed, we are not inclined to issue notice in the present special leave petition. ***The assessee has no role to play and is not the author of the assessment order and hence the manner and contents of the assessment order as framed is not determinative whether or not it is a case of change of opinion.***

(iv) Honourable Delhi High Court in CIT vs Usha International Ltd. [2012] 348 ITR 485 (Delhi)/[2012] 253 CTR 113 (Delhi) observed as follows:

"5. *I have searched in vain the provisions of the Act to find out if there is any provision therein laying guidelines as to how an assessment order shall be drafted. However, considering the onerous duty placed on the assessee as outlined above, one would expect*

the assessment order to be drafted in sufficient detail, where at least the basic features of the assessment are brought out. But due to several constraints – it is beyond the scope of this opinion to discuss them – it has been observed, and it has also been the general experience, that assessment orders are so drafted that they contain a discussion, briefly or in detail, ***only on points on which there is a difference of opinion between the assessee and the assessing authority. Where the contention or claim of the assessee is accepted, seldom do we find any discussion in the assessment order as to why it is being accepted.*** *This has prompted the Commissioner of Income Tax in several cases to invoke the provisions of section 263 on the footing that the assessment so completed is erroneous and prejudicial to the interest of the revenue. It is significant to note that the CIT under section 263 is empowered to call for the record of the proceedings before making up his mind as to the justification for the revision. The reason is not far to seek:* ***the question whether the AO had applied his mind to a particular claim made by the assessee and had accepted it rightly can be judged only on the basis of what material or evidence was led before him, and not on the basis of what was written in the assessment order.*** *This is an implicit recognition in the Act that the emphasis is on the furnishing of full and true particulars and primary facts by the assessee,* ***rather than on the manner in which the AO deals with them in the assessment order. Moreover, the assessee, as it was urged, has no say or control over the manner in which the assessment order is drafted****."*

(v) Honourable Delhi High Court in CIT vs Vikas Polymers. [2012] 341 ITR 537 (Delhi) held as follows:-

"This is for the reason that if a query is raised during the course of scrutiny by the Assessing Officer, which was answered to the satisfaction of the Assessing Officer, ***but neither the query nor the answer were reflected in the assessment order, this would not by itself lead to the conclusion that the order of the Assessing Officer called for interference and revision****."*

(vi) Honourble Bombay High Court in CIT vs Reliance Communications Ltd. (2017) 396 ITR 217 (Bom.)held as follows:-

"The mere fact that ***the Assessing Officer did not make any reference to these three issues in the assessment order cannot make the order erroneous when the issues were indeed looked into.*** *The entire details were filed and the order itself indicates that it can*

be inferred that the Assessing Officer not only made enquiries, but satisfied himself with the assessee's replies furnished from time to time in support of its stand. When the Tribunal concludes in this manner and finally in paragraph 16 holds that the Assessing Officer took a perfectly correct or a possible view, then, the order passed by him cannot be termed as erroneous insofar as it is prejudicial to the interest of the Revenue. The Commissioner of Income Tax was not, therefore, justified in invoking section 263 of the Act."

(vii) **Honourable Bombay High Court in<u>DCW Ltd v. ACIT, in WP(C) No. 1250 of 2022 dated 10.11.2023</u>**held as follows:-

"11. In the order disposing the objections, there is no denial of the fact that these materials were made available or these details were called for during the assessment proceedings. The only explanation is that these have not been discussed in the assessment order. In Aroni Commercials Ltd. v Deputy Commissioner of Income Tax 2(1), Mumbai & Anr. this Court has held that once a query is raised during the assessment proceedings and assessee has replied to it, it follows that the query raised was the subject of consideration of the Assessing Officer while completing the assessment. ***It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised****."*

(viii) **HonourableDelhi High Court in CIT vs Sunbeam Auto 332 ITR 167(Delhi) (Page no. 185-196 of Case Law Compilation No.1), in para-12** has held as under:-

*"12. ……..****As noted above, the submission of learned counsel for the Revenue was that while passing the assessment order, the AO did not consider this aspect specifically whether the expenditure in question was revenue or capital expenditure. This argument predicates on the assessment order which apparently does not give any reasons while allowing the entire expenditure as revenue expenditure. However, that by itself would not be indicative of the fact that the AO had not applied his mind on the issue. There are judgments galore laying down the principle that the AO in the assessment order is not required to give detailed reason in respect of each and every item of deduction, etc. Therefore, one has to see from the record as to whether there was application of mind before allowing the expenditure in question as revenue expenditure."***

*Therefore, the appellant submits that the learned DR's comments that "*silence is not a view and the assessee's claim that the AO verified the details and came to a conclusion (para 4.3(ii) of AWS-1 is an inference drawn from silence"* is based on incorrect perceptions on the facts and circumstances of the appellant's case and not recording of his findings in the assessment order is not a defect as pointed out by the learned DR.

6. Appellant's reply to "The earlier ITAT Order does not help.

The learned DR has stated that the Order dated 2-9-2022 (Page 1-73 of Case Law Compilation No.1) is pending before the Karnataka High Court and dealt with periodic JDA revenue for AYs 2015-16 and 2016-17 – not the 2019 Agreement now in issue and further section 2(47)(v)/(vi) question on this instrument has not been adjudicated by any forum.

The appellant response is as follows:-

- At para 2.1 herein above, the appellant has explained in detail that the Agreement of Sale is squarely covered under the definition of transfers contained in sub-clauses (i) and (ii) of Section 2(47) of the Act and it tantamount to transfer of a capital asset within the meaning of said section. Taking into consideration of all the above mentioned aspects, the learned AO came to a conclusion that the Agreement of Sale constitutes transfer of a capital asset in terms of clause (i) and (ii) of Section 2(47) of the Act and accordingly accepted the sale consideration as Capital gains.

- Since the legal possession of the property was not given, the appellant has never claimed that section 2(47)(v) would apply to the Agreement of Sale. The learned Pr.CIT in the Revision Order (in Para-17 at page no.10) has applied this sub-clause to the Agreement of Sale and came to a conclusion that the transaction will not constitute "transfer" for the purpose of Capital gains. Despite our detailed submissions in our Response dated 12-2-2025 (from pages nos. 66 to 88 of the Appeal Memo) to the Notice dated 23-1-2025 on this issue, the learned Pr.CIT has overlooked the applicability of the clauses (i) and (ii) of section 2(47) of the Act to the Agreement of Sale

and kept silent on our said explanations and he just repeated the same observations in the Revision Order as well.

- If we look at the Revision Order dated 24-3-2025, in many paras (paras-2 to 7, 15,16,17), the learned Pr.CIT is referring to the facts relating to previous JDA dated 28-3-2011, receipt of refundable deposit, assessee has not treated the handing over the land to M/s. RPPL at the time of JDA as deemed transfer u/s 2(47)(v) of the Act, receipt of sale proceeds on year to year basis, accounting treatment given in previous years, certain covenants contained in JDA and JDA is adventure in the nature of trade, to establish the fact that the Binnypet Land held by the appellant is not a capital asset but stock-in-trade and hence sale consideration received vide Agreement of Sale dated 27-5-2019 shall be taxable under head Income from Business in place of Capital gains. Further, the paras 2 to 7 and the case laws (except CIT vs Paville Projects Pvt. Ltd. of 2023) relied upon are similar to those contained in the previous Revision Orders dated 18-3-2020 for AY 2015-16 and dated 30-3-2021 for AY 2016-17.

- Therefore, the appellant submits that all the facts and arguments stated in the present Revision Order dated 24-3-2025 by the learned Pr.CIT pertaining to taxing the income under head Income from Business have been considered by the Honourable Tribunal in its Order dated 2-9-2022 in paras-7.4 to 7.19 in detail and held that the JDA is not adventure in the nature of trade and it is a capital gains derived from sale lands/UDS under JDA. The Honourable Tribunal has also analysed various case laws of SC and HCs including the case of G.Venkataswami Naidu & Co. vs CIT (1959) 35 ITR 594 (as relied upon by the learned DR) and applied to the facts of the appellant's case.

- In view of the above facts of the case, the statement made by the learned DR that earlier ITAT order does not help is devoid of merits. The appeals filed by the Revenue is yet to be heard by the Honourable Karnataka High

Court and there is no stay on the operations of the ITAT Order dated 2-9-2022.

7. Appellant's Reply to IV.B - Section 263(1) expressly authorises Remand for Fresh Inquiry (Grounds of Appeal Nos. 9-11)

In response to Revised Grounds of Appeal Nos.9-11 of the appellant, the learned DR states that section 263(1) let the Pr.CIT cancel the assessment and order a fresh one, where the defect is no-inquiry, that is the proper course.

The appellant wish to submit as follows:-

*In the AWS-1 dated 24-2-2026, the appellant under heading Issue No.2 at paras nos. 11.1, 11.2 and 12 (at page nos.17-19), the appellant has given its detailed submissions in support of its Grounds of Appeal Nos.9 to 11 that the Revision Order of the learned Pr.CIT is bad in law as the learned Pr.CIT is not sure about the correct head under which the sale consideration is taxable – whether under Income from Business or Other Sources? Learned Pr.CIT has given inconclusive directions to AO while setting aside the assessment order and failed to determine whether assessment order is erroneous or not? Further, primary intention to invoking the section 263 in the appellant case is to tax the impugned income at higher rate of tax, which does not constitute a valid ground for treating the assessment order as erroneous. In support of its contention, the appellant has relied upon various case laws, which is given at para no.13 (at page nos.20-22) of AWS-1 dated 23-2-2026.

*In para-1 to AWS-2 dated 25-6-2026 (page nos. 1- 6), the appellant has made submissions to the DR's contention that the AO has not examined the issue of treatment of sale consideration under heading Income from Business or Income from Other Sources and cited few case laws in support of its views. The Honourable Tribunal is requested to kindly consider the said submissions.

*In paras 2 and 3 herein above, the appellant has explained that when the learned AO after adequate inquiries came to the conclusion that the sale consideration is taxable under head capital gains on the facts and circumstances of the appellant's case, which is a legally permissible view, then there was no requirement for the

AO to conduct deep inquiries whether the impugned income is taxable under any others heads and to issue show cause notice in that connection.

* In many cases, the Courts have held that the Revisionary powers of the Commissioner under section 263 of the Act are supervisory and not intended to substitute the Commissioner's judgment for that of the AO, provided the AO's decision was made after due application of mind and inquiry and is a legally sustainable view.

(i) The Honourable Supreme Court in case of Pr.CIT vs M/s.V.Con Integrated Solutions Pvt Ltd. dated 4-4-2025 (page nos.98 to 99 of Case Law Compilation No.1) held that –

"The power under section 263 can be exercised by the Commissioner of Income-tax, but going into the merits and making an addition, and not by way of remand, recording that there was failure to investigate. There is a distinction between the failure or absence of investigation and a wrong decision/conclusion. A wrong decision/conclusion can be corrected by CIT with a decision on merits and by making an addition or disallowance. There may be cases where the AO undertakes a superficial and random investigation that may justify a remit, albeit the CIT must record the abject failure and lapse on the part of AO to establish both the error and the prejudice caused to the Revenue."

(ii) The Honourable Delhi High Court in CIT vs Sunbeam Auto 332 ITR 167(Delhi) (Page no. 185-196 of Case Law Compilation No.1), wherein while considering the distinction between lack of inquiry and inadequate inquiry, the Honourable Court in para-12 has held as under:-

" 12. Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
L*earned Counsel for the assessee is right in his submission that one has to keep in mind the distinction between "lack of inquiry" and "inadequate inquiry". If there was any inquiry, even inadequate, that would not by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has different opinion in the matter. It is only in case of "lack of inquiry" that such a course of action would happen.*

15. Thus, even the Commissioner conceded the position that the Assessing Officer made the inquiries, elicited replies and thereafter passed the assessment order. The grievance of the Commissioner was that the Assessing Officer should have made further inquiries rather than accepting the explanation. Therefore, it cannot be said that it is a case of 'lack of inquiry'."

(iii) **In Pr.CIT vs Brahma Centre Development Pvt. Ltd. (2021) 437 ITR 285),(Page no.142-159 of Case Law Compilation No.1) the Honourable Delhi High Court, referring to the Honourable Supreme Court judgement in case of**

"Prarshuram Pottery Works Co. Ltd. vs ITO (1977) 106 ITR (SC)" in para-11 of its decision held as follows:-

"11. The assessment order can be interdicted u/s 263 of the Act, if two conditions are met, i.e. that the order is erroneous and is prejudicial to the interest of the Revenue (see Malabar Industrial Co. Ltd. vs CIT (2000) 243 ITR 83 (SC); and CIT vs Max India Ltd. (2007) 295 ITR 282 (SC). Therefore, the error should be one that is not debatable or a plausible view. Section 263 of the Act invests a power of revision in a superior office and therefore by the very nature of the power, does not allow for supplanting or substituting the view of the Assessing Officer. The appreciation of material placed before the Assessing Officer is, exclusively within his domain which cannot be interdicted by a superior officer while exercising powers u/s 263 of the Act only on the ground that if he had appraised the said material, he would have come to a difference conclusion. (See Prarshuram Pottery Works Co Ltd. vs ITO (1977) 106 ITR (SC)"

(iv) The Honourable Delhi High Court in case of ITO vs D.G.Housing Projects Ltd. (2012) 343 ITR 329(Del) (Page nos. 1039-1057 of Case Law Compilation No.5) has held as under:

"16. Thus in case of wrong opinion or finding on merits, the CIT has to come to the conclusion and himself decide that the order is erroneous, by conducting necessary enquiry, if required and necessary, before the order under section 263 is passed. In such cases, the order of the AO will be erroneous because the order passed is not sustainable in law and the said finding must be recorded. CIT cannot remand the matter to the AO to decide whether the findings recorded are erroneous. In cases where there is inadequate enquiry but not lack of enquiry, again the CIT must give and record a finding that the order/inquiry made is erroneous. This can happen, if an enquiry and verification is conducted by the CIT and he is able to establish and show the error or mistake made by the AO, making the order unsustainable in Law. In some cases possibly though rarely, the CIT can also show and establish that the facts on record or inferences drawn from facts on record per se justified and mandated further enquiry or investigation but the AO had erroneously not undertaken the same. However, the said finding must be clear, unambiguous and not debatable. The matter cannot be remitted for a fresh decision to the AO to conduct further enquiries without a finding that the order is erroneous. Finding that the order is erroneous is a condition requirement which must be satisfied for exercise of jurisdiction under section 263 of the Act. In such matters, to remand the matter/issue to the AO would imply and mean the CIT has not examined and decided whether or not the order is erroneous but has directed the AO to decide the aspect/question."

From the foregoing submissions, it is quite obvious that section 263(1) does not expressly authorises remand for fresh inquiry by the AO. In the case of the appellant there was adequate inquiries on taxability of sale consideration as LTCG; there was a Honourable Tribunal decision in favour of the appellant on similar issue relating to AYs 2015-16 and 2016-17; and during the scrutiny assessment proceedings from AYs 2015-16 to 2018-19, the learned AOs had consistently held that the Binnypet Land is a capital asset and income from JDA is taxable under

head Capital gains. The views taken by the learned AO for AY 2020-21 is a plausible view. Therefore, it is submitted that the learned DR's contention that in the appellant's case, there was no inquiry or defect in inquiry and hence the Pr.CIT is justified in cancelling the assessment order for fresh inquiries, is based on unproven grounds and unsustainable in law.

8. Reply to IV.C. Natural justice was fully met (Grounds of Appeal Nos.19-20)

The learned DR has referred to the findings given by Honourable Supreme Court in case of CIT vs Amitabh Bachchan that there is no need to issue notice on the issues to be covered under section 263 and a hearing is enough.

*The appellant in para-2 of the AWS-2 dated 25-6-2026 (at page nos.6-9) has made submissions on the above issue at length for kind consideration of the Honourable Tribunal. In its submissions, as laid down by Honourable Supreme Court in case of CIT vs Amitabh Bachchan, the appellant has explained that though there was a gap of around 40 days from the date of submission of response dated 12-2-2025 and the date of passing of Revision Order dated 24-3-2025, the learned Pr.CIT has not provided any hearing opportunity to the appellant on the third issue i.e. taxing the sale consideration under head Income from Business. In support of the said view point, the appellant has relied upon the Bombay High Court decision in case of Pr.CIT vs M/s Universal Music India Pvt. Ltd. dated 19-4-2022 and the SLP rejected by Honourable SC; and ITAT, Mumbai in case of Perfect Filaments Ltd. vs Pr.CIT dated 10-9-2025. The appellant has also placed reliance on Honourable Bench of ITAT, Bangalore in case of M/s. Poovayya & Co. vs Pr.CIT dated 20-1-2026 given in para-26.16 of the said Order on the requirement of giving proper and specific opportunity to the assessee. The appellant requests the Honourable Tribunal to kindly consider the said submissions.

*As regards learned DR statement that "The assessee in fact argued the business income point in its 58 page objections dated 12-2-2025 (Page 51-110 of the Appeal Memo) and there is no prejudice"; the appellant submits that in the said objections, its submissions was confined to merits of the two issues raised by the learned Pr.CIT, i.e. i) sales commission paid to BHN Foods claimed as deduction u/s 48(i)

and taxing of sale consideration under head Income from Other Sources in place of Capital gains and lack of jurisdiction to exercise revisionary powers under section 263 of the Act. The appellant, to substantiate its view point that Binnypet Land (UDS) sold to the Developer vide Agreement of Sale dated 27-5-2019 is a capital asset, in para 2.9.2 of its Response dated 12-2-2025 (at page no.26) has brought to notice of the learned Pr.CIT, under sub-heading that *"Honourable ITAT, Bangalore in its Order dated 2-9-2022 has confirmed that the entire Land held at Binnypet by the assessee is Capital Asset and the income received from the Parkwest project for AYs 2015-16 and 2016-17 for sale of undivided share of Land is taxable under head Capital Gains and not as Income from Business as contended by the Revenue previously."* The appellant has never made any arguments against the third issue – taxability of sale consideration under head Income from Business, as claimed by the learned DR.

* It is pertinent to note here that in the last para given under above sub-heading (C.Natural justice fully met) (at page no.10), the learned DR has stated that – *"In any event, in the instant case the operative direction of the PCIT rests on the characterisation of income under the Agreement – an issue squarely raised at paras 4-8 of the Notice u/s 263.* ***Even setting aside every business-income observation, the Revision Order stands."*** The learned DR is indirectly admitting the fact that since no opportunity of hearing for inclusion of third issue – business income issue was provided to the appellant, hence the said issue may likely to be set aside, then also the Revision Order stands in respect of characterization of income under the Agreement.

9. Reply to IV.D. BHN Foods brokerage of Rs.11.22 Crores (Ground No.13)

The learned DR has stated that the basic contract was never seen by the AO. Engagement Letter was not produced and Rs.11.22 Crore deduction was allowed without the AO seeing it.

The appellant submission is a follows:

*The appellant, in the AWS-1 dated 23-2-2026 in paras 5.1, 5.2 (at page nos.8-9) under Issue No.1 and in paras 15.1 to 15.10 (at page nos.24-30) under Issue No.4 –

Merits on learned Pr.CIT's observations and also vide its response dated 19-8-2022 has made detailed submissions on the above mentioned issue, such as details of documents submitted to queries No.5 & 6 of Notice u/s 142(1) dated 3-8-2022 with justification for incurring said expenditure, including citation of few case laws in support of its claim. The appellant request the Honourable Tribunal to kindly consider the said submissions.

* In response to the observations made by the learned Pr.CIT in paras-2 & 3 of the Notice u/s 263 dated 23-1-2025, all copies of above documents including copy of the Engagement Letter (page nos.3-4 of Paper Book No.1) with detailed justifications for payment of sales commission to BHN Foods (Pl. refer paras nos.1.2 – 1.4 of its Response dated 12-2-2025 to 263 Notice dated 23-1-2025) were submitted to the learned Pr.CIT for his consideration. Since the learned AO has not specifically asked the copies of said Engagement Letter, the same was not furnished to them. However, after considering all these details including the justifications given for incurring said expenditure, the learned AO has allowed the deduction of said expenses under section 48(i) of the Act as claimed in the ITR.

* It is significant to note that in the Revision Order dated 24-3-2025, under heading "Conclusion & Decision", the learned Pr.CIT while setting aside the assessment order, has not given any specific directions to disallow the deduction claimed on the sales commission paid to BHN Foods after conducting further verifications. The learned Pr.CIT has directed the AO to pass fresh order after carrying out the necessary verification and examination **regarding treatment of income arising in view of "Agreement of Sale without Possession" executed on 27-5-2019**, after providing adequate opportunity to the assessee. Since there was no specific directions from the learned Pr.CIT on the aforementioned issue, it seems that the learned AO in the course of fresh assessment proceedings u/s 263 has not at all considered the said issue as relevant and has not called for any details/ information on the said issue in his Notice u/s 142(1) dated 19-1-2026.

10. Reply to IV.E The transfer question was never examined (Grounds 12,14-18)

In response to learned DR's contentions mentioned under the above heading, the appellant wish to make following submissions:-

*The appellant in the AWS-1 dated 23-2-2026 *under heading Issue No.5- "Merits on learned Pr.CIT's opinion in holding that the registered Agreement of Sale without Possession dated 27-5-2019 did not constitute a valid "transfer" under section 2(47) of the Act and hence the full sale consideration received is not taxable under head 'Capital gains' but same is taxable under head 'Income from Other Sources'" in support of its Revised Grounds of Appeal Nos.12,14&15) in paras-16 to 18 (at page nos.30-40)* has made elaborate submissions covering all the points raised by learned DR under heading IV.E above, including various case laws in support of the appellant's said submissions. Further, the appellant in the AWS-2 dated 25-6-2026 at para-12 (page nos.17-20), the gist of above submissions. The appellant requests the Honourable Tribunal to kindly consider the same.

* Besides, in paras 2 & 3 hereinabove, the appellant has explained how the Agreement of Sale dated 27-5-2019 is transfer within the meaning clauses-i) and ii) read with Explanation-2 of section 2(47) of the Act on account of relinquishment and/or extinguishment of all the rights (except legal possession) by the Sellers on the Land (UDS) sold to the Developer against receipt of full sale consideration. The appellant also submitted that the observations made by the learned Pr.CIT in the Revision Order, such as no transfer of possession in terms of clause-13 of the Agreement, payment of inadequate stamp duty and notice received for recovery of deficit stamp duty, deemed transfer within the meaning section 2(47)(v) of the Act (part performance), no transfer of ownership in the absence of sale deed, etc. are the ingredients necessary for considering "transfer" in relation to sale of an immovable property under the provisions of Common Laws/Transfer of Property Act,1882.

*In case of CIT vs Balbir Singh Maini, the Honourable Supreme Court in para-22 of the judgment has considered the aspect of **de-facto transfer of immovable property in substance, though title may not be transferred in law** and in such

cases section 2(47)(vi) is attracted. Further in case of Seshayee Steels Pvt. Ltd. vs ACIT, in paras-17,18 & 20 of the judgment, the Honourable Supreme Court has referred to the observations made in para-22 of the judgement in case of CIT vs Balbir Singh Maini and held that the Compromise Deed coupled with Agreement to Sell and the Power of Attorney could be stated to be a transaction which had the effect of transferring the immovable property in question. The appellant has relied upon both these judgments in AWS-1 dated 23-2-2026 at page no.45 in support of its views.

11. Reply to IV.F. Audit objections (Additional Grounds)

The appellant submits that in para-9 of its AWS-2 dated 25-6-2026 (at page nos.14-15) has covered the observations made by the learned DR in the above paras. The appellant humbly submits that if the Audit objections are not taken into consideration by the learned Pr.CIT while issuing the Notice u/s 263 dated 23-1-2025, then the Revenue should not hesitate to produce the said objections before the Honourable Tribunal to contradict the view point of the appellant.

12. Reply to V. The income is Business Income (from the assessee's own records) given in the RWS dated 25-6-2026.

At the outset, in response to observations/comments made by the learned DR under above heading vide paras 5.1 to 5.9 in the RWS dated 25-6-2026 (at page nos.12-16), the appellant submits that in its AWS-1 dated 23-2-2026 in paras-19-20 (at page nos.49-65) has made detailed submissions under various sub-headings replied to most of his observations/comments. Moreover, in its AWS-2 dated 25-6-2026 in paras-3,4,5,6,7 (at page nos.9-13), the appellant has also given submissions on the Business income point, pursuant to the hearing held on 15-6-2026. The appellant requests the Honourable Tribunal to kindly consider the said submissions.

12.1 Reply to 5.1 The Firm was built for development

* As regards observations of the learned DR referring to Para-1 of the Revision Order, that "*the Partnership Deed describes the Firm as in the business of real*

estate development", the appellant submits that it has never engaged in the business of real estate development. The appellant has neither carried out any real estate business activities nor it has purchased or sold any Land till date except sale of UDS in Binnypet Land via JDA or balance UDS to the Developer vide Agreement of Sale dated 27-5-2019 (Kindly refer to Para-19.2 of AWS-1 dated 23-2-2026 at page nos 49 & 50).

* Out of 7 partners mentioned in the Original Deed of Partnership dated 2-7-2008, two partners, namely -ETA Star Property Developers Ltd and ETA Estates Pvt. Ltd. had retired in April,2011 (immediately after signing the JDA dated 28-3-2011). Out of remaining five present partners, only the ETA Karnataka Estates Ltd and ETA Constructions (India) Ltd. are major partners and remaining three partners are holding 1% share each. Except ETA Constructions (India) Ltd all remaining partners are Landholding Companies and not engaged in real estate developments.

* Though the appellant Firm's received the Binnypet Land as capital contribution from the Partner, ETA Karnataka Estates Ltd. (a purely a Landholding company), initially to set up an IT-SEZ Park project, due to financial and other constraints and recession in the economy, the appellant had to abandon the said proposal. Since the proposal envisaged was a capital intensive in nature, and the same was received on capital account from a partner, the appellant has accounted the said Land as Capital Work-in-Progress/Fixed asset in its Balance-sheets. In this context, the appellant wish to refer to the **Hon'ble Karnataka High Court decision in CIT vs M/s. Bagmane Developers –dated 3-11-2016 (Page nos.636-668 of Case Law Compilation No.2) has observed that *"The promoters of a Software Park can generally view this project only for the purpose of investment and not as stock-in-trade (at page no.665 of Case Law Compilation No.2) ; and the buildings and infrastructures created are leased out to various clients, the maintenance of which is looked after by the promoters."***

* As regards the comments of the learned DR referring to the decision of Venkataswami Naidu (SC), the intention at the time of acquisition is the key test

and that intention here was commercial development, the appellant submits that it is only one of the several factors mentioned in the said judgment. In the appellant's case, the Honourable Bench of ITAT, Bangalore in its Order dated 2-9-2022 for AYs 2015-16 and 2016-17 in para 7.10 has considered the said decision and besides in paras 7.6 to 7.17, the Honourable Bench has analysed several judgments on these aspects before concluding that the Binnypet Land contributed by the appellant into JDA is a capital asset.

12.2 Reply to 5.2 When the Infopark failed, the land was re-used, not retired

* The appellant has just contributed an empty Land into JDA dated 28-3-2011 for development of a residential project by the Developer, M/s. Relationship Properties Pvt. Ltd. (RPPL) against receipt of fixed percentage of revenue share entitlement. Just contributing a Land by a Landowner into JDA is not a business venture as stated by the learned DR.

* Firstly, the appellant wish to clarify that Capital work-in-progress is a sub-heading and part of Fixed Assets/Property, Plant and Equipment appearing in a Balance-sheet and not a separate project under development forming part of Inventory/Stock-in-trade appearing under heading Current Assets in a Balance-sheet. When the appellant received the Land parcel from the Partner during FY 2008-2009 (First year), the same was shown as Capital work-in-progress, and in the FYs 2009-2010 (2nd year) and 2010-11 (3rd year) it was shown as Fixed Asset. Thereafter from FYs 2012-2013 till 2019-2020, the same was appearing as Capital work-in-progress in the Balance-sheets. When the Land was given under custody of the Developer, the appellant has not incurred or debited any expenditure to Capital WIP, which crystalized at Rs.5.16 Crores (Land cost at Rs.4.35 Cr. Plus Other expenses at Rs.1.23 Cr.) as on 30-9-2011 which is evident in the Balance-sheets as at 31-3-2012, 31-3-2013 and 31-3-2014. When the appellant has started receiving the revenue share from JDA, the Capital WIP has started decreasing from FYs 2014-2015 to 2019-2020 on account of adjustment of proportionate cost of acquisition against LTCG offered to tax in the respective ITRs. In this regard, the appellant wish to refer to Annexure-5 filed as Additional documents (at page

nos.8 & 9) on 8-4-2026 and also given in para-19.7 of AWS-1 dated 23-2-2026 (at page nos.53 & 54) for kind consideration of the Honourable Tribunal.

12.3 Reply to 5.3 The JDA terms are those of a profit-sharing business

* The appellant was entitled to receive 26.323% out of 31% entitled to both Landowners together and not any profit arising out of the Parkwest project. The role of the assessee is passive in nature and received the passive income in the form of revenue share. The profit and loss arising out of the project and incurring the entire cost for the development and constructions solely rests with the Developer.

* Receipt of fixed percentage of revenue share from a JDA in lieu of constructed built up area is capital gains. FAQ s issued by the CBDT on JDA confirm this aspect. The Honourable ITAT, Bangalore in Dy.CIT vs Sri Vinod Narappa Reddy (page nos.554-563 of Case Law Compilation No.2) and ITAT, Hyderabad in ITO vs G.Vijaysimha Reddy (page nos.564-590 of Case Law Compilation No.2) have held that receipt of revenue share from JDA is Capital gains. **Recently, the Honourable Bangalore ITAT in Dy.CIT vs Mathikere Ramaiah Seetharam in ITA No.1027/Bang/2025 for AY 2013-14 – Date of decision -28-11-2025 has confirmed the decision of CIT (Appeals) holding** "***that merely entering into a JDA does not convert a capital asset into stock-in-trade, nor does the sharing of revenue (37% in the said case) make the assessee a real estate developer*** (copy of said decision is enclosed). *According to learned CIT(A) the assessee's participation was limited to contributing land, while the actual development was entirely undertaken by the developer. Therefore, the AO's conclusion that the assessee was engaged in business activity was factually incorrect and unsupported by record."*

* In the appellant's case as well, the Honourable ITAT, Bangalore in its decision dated 2-9-2022 has considered all the detailed submissions of the appellant (Kindly refer to para nos.5.1 to 5.20 of the said Order) and came to a conclusion that the

Binnypet Land contributed into the JDA is capital asset and said JDA is not adventure in the nature of trade.

* As regards the comments of learned DR on the points definition of "Net revenue"; "Minimum guaranteed rate of Rs.4,800/sq.ft" and "Non-compete clause and active duties", the appellant in paras 19.9(a) to (f) of AWS-1 dated 23-2-2026 (at page nos.55-59) has given detailed explanations/ clarifications on few covenants from JDA as pointed out by the learned Pr.CIT in para-17 of the Revision Order including those mentioned by the learned DR. In its submissions, the appellant has stated that to maximize its revenue entitlement under JDA, the definition of Net Revenue covers most of the possible source of income, otherwise the entire benefit will accrue to the Developer. The Non-compete clause provided in the JDA is applicable to the Second Landowner and not meant for the appellant. The appellant request the Honourable Tribunal to kindly consider the same.

* The appellant has received the Refundable Security of Rs.180 Crores from the Developer pursuant to JDA terms in the FY 2011-2012 (in April,2011) and the said deposit is shown in Schedule-3 under heading Current Liabilities as ***"Other Liabilities"*** (Kindly refer Annexure-9- Schedule-3 at page no.26 of the Additional documents) and subsequent FYs also the same presentation continued and not as Advance from Customers as stated by the learned DR. It appears that while perusing the Financial Statements for FY 2010-2011 (Annexure-8 – Schedule-3 at page no.21 of Additional documents under heading Current Liabilities, though the item Advance from Customers is appearing, the figure shown is 0).

12.4 Reply to para- 5.4 The assessee's own accounting and tax conduct treated this as business

Reply to para-5.4 (A) Receipts shown as operation income

* The appellant has never shown any receipts as operation income in the main statement of Income & Expenditure and the income received from JDA was shown under heading "Other income" in the main statement of Income and Expenditure. The appellant submits that the appellant is a partnership firm and

there is no standard format prescribed for preparation of financial statements by partnership firm unlike for companies under Companies Act,2013. No Audit Report, Significant Accounting Policies and Additional Notes to Accounts, etc are prepared. Instead of Statement of Profit and Loss, a partnership firm prepares "Statement of Income and Expenditure", wherein all the income received/ earned by the Firm during the financial year are reported under main heading "Income" with no prescribed set of sub-classifications. Whereas in a Statement of Profit and Loss, the Companies are mandatorily required to show the income from operations and other income separately.

* From AY 2024-2025 onwards, the ICAI has prescribed a standard format for partnership firms, etc and made the presentation compulsory, but no audit report is required. The appellant, in the main Statement of Income and Expenditure for the FYs 2015-16 and 2016-17 had shown the net long-term capital gains (after deducting proportionate cost of acquisition) under heading "Other Income" and Interest income separately. Whereas in the Tally Accounting Software used by the appellant at that time, all income received are shown under sub-heading "Direct Income" and all the direct costs/ expenses were shown under sub-headings "Cost of Trading Properties"/ "Direct Expenditure" and the General and Admin expenses incurred were shown as "Indirect Expenses" etc. Due to these wrong classifications in the Tally Software, inadvertently the same headings are extracted in the relevant Schedule to Statement of Income and Expenditure for above mentioned AYs. However, the balance cost of capital asset (after deduction of proportionate cost of acquisition) was shown correctly as "Binnypet Land" in the relevant Schedule under heading "Capital WIP" in the Balance-sheet.

* Further, in the ITRs for AY 2015-16 and 2016-17, in the Schedule Part-A of P&L, the income received from JDA is declared under heading "Other Income"-sub-heading "Any Other Income" and not under heading "Revenue from Operation". The income was declared under heading "Capital Gains" in its ITRs.

* The appellant submits that any treatment of taxability of income reported in the Statement of Income and Expenditure/P&L is not dependent on how it is reflected

therein but on the true nature and source of such income. It is submitted that the entries in the books of financial statements do not fasten the tax liability and the tax liability is based on the provisions of the Act independent of the manner of presentation in the financial statements.

* In support of its above, the appellant place reliance on the decisions of Honourable Supreme Court in case of **Kedarnath June Manufacturing Co. Ltd.vs CIT** 82 ITR 363(SC) – (Page nos.591-594 of Case Law Compilation No.2) and in **Taparia Tools vs JCIT (2015) 372 ITR 605(SC).**

* In the case of the appellant, the Honourable ITAT, Bangalore in its Order dated 2-9-2022 has considered the above submissions of the appellant for AYs 2015-16 and 2016-17.

Reply to para- 5.4 (B) Land cost absorbed year by year like trading stock

* In terms clause-7 of the JDA dated 28-3-2011, the appellant was receiving revenue share/income from JDA as and when the sale considerations are received from the buyers in two Primary Escrow Accounts opened specifically for Phase-1(3 towers) and Phase-2(3 towers). The appellant has offered the said income received from JDA as LTCG on yearly basis in ITR from AYs 2015-16 to 2019-2020 and the lump sum sale consideration received of sale of UDS to the Developer on 20-6-2019 in AY 2020-21. Since the income was received on periodical basis as per revenue share entitlements as outlined in the JDA and offered to tax as LTCG on yearly basis, as per mercantile accounting norms and advice given by our Auditors, it was absolutely necessary to apportion the total cost of Land (Rs.4.35 Crores) & other expenses (Rs.1.23 Crores) crystalized at Rs.5.58 Crores as at 31-3-2012 based on the income booked as LTCG in the books of the appellant every year.

* Therefore, as per the computation prepared by our Auditors, the total cost of Rs.5.58 Crores was apportioned based on the total estimated revenue for Phase-1 and Phase-2 of the Parkwest project with reference to total SBA of each Phase

multiplied by average selling rate @ Rs.7,500/- per sq.ft for Phase-1 and @ Rs.8,000/- per sq.ft for Phase-2. Thus, the cost apportioned for entire Phase-1 is Rs.1.30 Crores and the percentage of cost vis-à-vis estimate revenue for Phase-1 is 0.58%. Similarly, the cost apportioned for entire Phase-2 is Rs.2.33 Crores and the percentage of cost vis-à-vis estimated revenue for Phase-2 is 0.54%. Since the actual income received from JDA during FYs 2014-15 to 2018-19, based on the pre-determined percentage, the appellant could claim the cost of acquisition of Rs.1.99 Crores during these period and as on 1-4-2019, the balance cost of acquisition outstanding was Rs.3.58 Crores. When the appellant sold the balance undeveloped UDS to the Developer vide Agreement of Sale dated 27-5-2019 and received full sale consideration on 20-6-2019, the appellant has claimed the balance cost of acquisition of Rs.3.58 Crores in the FY 2019-20 against the said sale consideration.

* Like normal sale, had the appellant received full sale consideration at one time in aggregate and not on piecemeal basis, then the appellant would have offered the entire income as LTCG in a single AY and claimed the entire cost of acquisition against the whole income, like what the appellant did for AY 2020-21. In case, the appellant has claimed entire cost of acquisition at one go at the final year, it is doubtful whether the Revenue would accept such claim.

* The learned DR is trying to equate the above apportionment/adjustment of cost of acquisition as a behaviour of trading stock. The appellant submits that in case of stock-in-trade, a real estate developer, initially shows the amount/ milestone payments received from the buyers as advance from customers under heading Current Liability in the Balance-sheet and not booked as income in the Statement of Profit & Loss on the same year on receipt basis. Depending upon the progress of the development and construction of the project, following the norms of Accounting Standard-7, a percentage of completion is worked out and the advances received from customers are booked as income in P&L based on that percentage of completion and offered to tax.

* This is not the case of the appellant. The appellant is a Landowner and its Land cost of Rs.4.35 Crores for 42 acres of Binnypet Land at Bangalore is very nominal. The appellant has never claimed any part of the cost of development and construction expenditure incurred by the Developer for the Parkwest project. It has also not followed the concept of Accounting Standard-9 (like other Landowners) - booking the income on the basis of project completion method, i.e. as when the Sale Deed for transfer of UDS was executed in favour of the Buyers for each flats.

* In the para-17 of the Revision Order, the learned Pr.CIT has stated that the appellant has not shown the Binnypet Land as Fixed Assets in Schedule-5 and not as Investments (relating to investment in shares) in Schedule-6 but the same is shown as Capital work-in-progress in Schedule-8 in the Balance-sheet for FY 2019-20. The appellant is showing the Binnypet Land as Capital WIP under a separate heading from the beginning in the Balance-sheet, but it is sub-heading forming part of Fixed Assets. It has never shown the same under head Inventory/stock-in-trade under Current Assets. As at 31-3-2020, there was no Binnypet Land as the entire cost of acquisition was set off during that FY 2019-20. In that para, the learned Pr.CIT by giving the closing balances of Binnypet Land appearing in Schedule-8 of the Balance-sheets as at 31-3-2015 to 31-3-2020, and observing the decrease trend, has commented that *"Thus, the assessee had not held the said lands for investment and instead the same were treated as stock-in-trade whose value kept on varying each year, which is corroborated by the fact that in closing stock or stock-in-trade, the valuation is always as per the market price or the cost price whichever is lower."*

Here, the learned Pr.CIT observing the declining trends in Capital WIP, intends to convey that the appellant has shown the closing stock of Binnypet Land at market price or the cost price whichever is lower in accordance with Accounting Standard-2 applicable to the valuation/presentation of Inventory. Therefore, the learned DR's comments that the value "kept on varying each year" exactly as stock does with sales is based on wrong presumptions.

Reply to 5.4(C) Business Loss claimed in the Returns

* Since the appellant has not carried out any business activities, it has never claimed any business expenses but claimed only the General & Admin expenses by way of set off u/s 71(2) of the IT Act, which were disallowed by the learned AOs from AYs 2015-16 to 2018-2019 and including present AY 2020-21 on the ground that there is no business activity and Nil income. All these expenses are revenue in nature and are incurred to keep appellant's legal existence alive, to maintain its establishment and to comply with accounting and legal requirements. In the ITR-V, there is no specific section to claim General and Admin expenses separately and the said expenditure cannot be directly claimed as cost of acquisition against LTCG or expenses incurred earning for interest income. Since these expenses are forming part of Income & Expenditure Statement, the appellant has to initially claim these expenses under section Income from Business or Profession in the ITR and then the loss arrived under that head has to claimed as set off u/s 71(2) of the Act in the ITR.

Reply to para- 5.4(D) No capital gain offered when the JDA was signed

* The appellant has given detailed submissions on the above point in its appeals for AY 2015-16 and 2016-17 against the previous Revisions Orders for said AYs and the said submissions has been considered by the Honourable ITAT, Bangalore in its Order dated 2-9-2022. Even the learned DR in his comments under para IV.E has referred to the Honourable Supreme Court decision in case of Seshayaee Steels Pvt. Ltd that a developers' license possession under JDA is not a deemed transfer under section 2(47)(v) of the Act.

Reply to 5.5 The capitalised expenses are development costs, not holding costs

* The appellant, in paras-19.7and 19.8 of the AWS-1 dated 23-2-2026 (at page nos.53-55) has given detailed submission that the appellant has not done any development or improvements on the Binnypet Land rights from its receipt as capital contribution from a partner till said Land was given for development to Developer under JDA. The appellant has given Year-wise break up of Binnypet

Land cost and Capital WIP appearing in the Balance-sheet and Year-wise break up of nature of Other expenses amounting to Rs.1.23 debited to Capital WIP. These statements were again submitted to Honourable ITAT on as Annexure-5 to Additional documents (at page no.8 & 9) on 8-4-2026.The appellant in para-5 (at Page nos.10 & 11) of its AWS-2 dated 25-6-2026 has also mentioned the above facts for kind consideration of the Honourable Tribunal.

* From the break up of nature of other expenses of Rs.1.23 Crores debited to Capital WIP, to find out the viability and feasibility of starting an Infopark project, in the first year, FY 2008-09, the appellant has incurred professional charges of Rs.47.05 Lakhs paid to various Consultants, such as Rs.19.21 Lakhs for feasibility studies, Rs.77,248 for environmental clearance work, Rs.15,442 for survey expenses, etc and Rs.2 Lakhs was paid for SEZ application fee. In FYs.2010-11 and 2011-12 professional charges of Rs.51.29 Lakhs paid to Consultants for seeking advisory services while entering into JDA with the Developer, Rs.14.43 Lakhs was incurred towards security charges. The detailed break up of the expenses of Rs.1.23 Crores debited to Capital WIP is given in the audited Financial Statements for FY 2013-14 enclosed as Annexure-10 under heading Sub-Schedule – Capital WIP at page no.36 of the Additional documents submitted on 8-4-2026. The appellant has never incurred any expenses on development or improvement of Binnypet Land. The appellant has given barren Land to the Developer.

* The appellant submits that incurring some professional charges for a proposed project, some professional charges for seeking advisory services for entering into JDA, security charges, khata fees, etc and debiting the same to Capital WIP does not constitute that the appellant has incurred development expenses on the Binnypet Land. The appellant has not at all engaged in any real estate development activities. In this context, the appellant wish to invite the kind attention to the Honourable Karnataka High Court decision in the case of M/s. Embassy Brindavan Developers vs CIT (Page Nos 120-122 of Case Law Compilation No.1) (the several facts of the said case are similar to those of the appellant) held that the income received from sale of Land sold, after abandoning the initial intention of setting up a Tech-park project on said Land, is taxable under

head capital gains and not as income from Business, as observed by the CIT in his revision order u/s 263 of the Act. The appellant has given the gist of the said decision in para no.11 at page no.11-12 of its AWS-2 dated 25-6-2026. The Honourable Supreme Court has upheld the said decision of Honourable High Court (copy of said decision is enclosed). The Honourable Tribunal is requested to kindly consider the same.

Reply to para-5.6 The 2019 sale monetised business receivables, priced on future revenue .

***** In terms of JDA dated 28-3-2011, the appellant was entitled to revenue share during a period of 8 years depending upon on the project implementation, sale of flats to the buyers and receipt of consideration from them linked to mile-stone payments. The first phase of the project was launched in July,2014 and second phase was launched in November,2015. Third phase was supposed to be launched in the year 2020.

* Since there was considerable delay in executing the project by the Developer, the appellant and other seller has decided to exit from the project by selling balance undeveloped UDS (around 43% of total UDS) against the future revenue entitlements from the 3rd phase of development and small portion of unsold flats in the second phase and balance receivables from the buyers pertaining to First and Second Phases. In terms of JDA, the appellant/Landowners are entitled to the revenue share spread over a period of 8 years and there was a delay of a Court case pending at Supreme Court regarding dispute on the title of the Land, the total period was extended to 10 years. When the appellant decided to exit from the JDA, 5 years were completed and remaining 5 years was there. Therefore, the total sale consideration was fixed based on prevailing sale price at that time and applying the Net present value for the remaining 5 years period.

* This was not a normal sale of Land by a seller to a buyer and pricing the capital asset on market value. The appellant had already contributed the Land into JDA and therefore the JDA terms were binding on the sellers. The appellant has sold a Land (UDS) forming part of a JDA, which is a capital asset. It is not an outright

sale of an existing or ongoing business venture, where the projected/estimated cash flows are valued at NPV under Discounted Cash Flow method to determine the price. Hence, the present sale cannot be compared with that of sale of business venture.

* Further, the appellant wish to point out that the total sale consideration received by the appellant was more than the guidance value fixed by the State Government and in response to learned AO's query no.8.d) of Notice dated 3-8-2022 (Page no.246-248 of Paper Book No.1), the appellant has furnished the said computation and given copies of Govt. Notification

* In the total UDS sold to the Developer vide Agreement of Sale, a small portion of the UDS, i.e. 86,371.69 sq.feet belonged to few flats unsold in Second Phase and balance UDS of 5,56,418.84 sq.feet was earmarked for third phase, which was undeveloped. This does not mean that the such UDS are stock-in-trade to the appellant.

Reply to 5.7 The fresh assessment confirms business income

*The learned AO in the course of fresh assessment, simply based on the observations on the JDA dated 28-3-2011 and directions given by the learned Pr.CIT in the Revision Order dated 24-3-2025 has passed the assessment order u/s 263 dated 25-3-2026 treating the sale consideration as Income from Business. The learned AO has not considered the directions given by learned Pr.CIT regarding conducting investigations whether the Agreement of Sale is transfer within the meaning of section 2(47) of the Act with a view to tax the sale consideration under head Income from Other Sources. If we peruse the above fresh assessment order dated 25-3-2026, the learned AO has just repeated most of the paras given in the said Revision Order. Though the appellant vide its submissions dated 29-1-2026 in response to Notice u/s 142(1) dated 19-1-2026 and in response dated 18-3-2026 to draft assessment has given a detailed explanations covering all the submissions made in its AWS-1 dated 23-2-2026 under heading Issue No.6 on merits of the business income issue, the learned AO has not considered or contradicted the same

and just made a token reference of the few points. When the appellant forwarded a copy of Honourable ITAT Order dated 2-9-2022 for AY 2015-16 and 2016-17 on the business income issue, the learned AO has stated the Revenue has not accepted the said decision and the matter is pending before the Honourable Karnataka High Court.

Reply to para 5.8 If it is business income, the transfer debate falls away

* In view of foregoing submissions made by the appellant in its AWS-1 dated 23-2-2026 and in para-12 herein above, the Binnypet Land is a capital asset and not stock of a business venture. The Honourable ITAT, Bangalore in its Order dated 2-9-2022, after considering the detailed submission of the appellant has held that Binnypet Land is capital asset and JDA is not adventure in the nature of trade as held by the learned Pr.CIT in his previous Revision Orders for AY 2015-16 and 2016-17. As explained herein above, similar line of arguments have been advanced by the learned Pr.CIT in his present Revision Order dated 24-3-2025 for AY 2020-21. The learned Pr.CIT is in a confusion mind that whether the sale consideration received vide Agreement of Sale dated 27-5-2026 is taxable either under head Income from other Sources or Income from Business or Capital gains. He has directed the AO to conduct the investigations and decide the correct head of income. The learned DR in the above para is admitting that ***"The Pr.CIT rightly left both questions open for inquiry (Para-5 of the Revision Order)."***

Reply to para 5.9 Rebuttal to the Assessee's main arguments

***** The appellant has submitted its detailed submissions on all the points mentioned by the learned DR in the above paras, in its AWS-1 dated 23-2-2026, AAWS-2 dated 25-6-2026 and in the foregoing paras of this submissions. The Honourable Tribunal is requested to kindly consider all these submissions.

* The appellant has given the empty land to the Developer for development at their own cost and resources. The appellant has neither participated in the development activities nor has any say in the matter. The appellant just received

revenue share as a passive income. As mentioned hereinabove and as decided by the Honourable Tribunal in its own case, the JDA is not adventure in the nature of trade and Binnpet Land contributed therein is capital asset.

* As explained above Capital WIP is a sub-grouping of Fixed Asset/Property, Plant and Equipment and not inventory/stock-in-trade. As explained hereinabove, in Reply to para-5.5 of the RWS, the appellant has incurred some professional & consultancy charges, security charges, property taxes paid, rent, travelling and misc. expenses etc in the FYs 2008-09,2010-11 and 2011-12. The appellant has not done any development or improvement on the Binnypet Land and has not incurred any expenditure on that account. Once the Land is given under JDA, it has not incurred any sort of expenditure. Since the appellant cannot add the above mentioned expenses directly to the Land cost, it has shown the Land cost and capitalized expenses as Other expenses separately under sub- heading Capital WIP, which is part & parcel of main heading Fixed Assets. Hence, the learned DR's contention that Capital WIP itself denotes a project under development and not an investment is based incorrect assumption of the facts of appellant's case.

* When the learned Pr.CIT in his present and previous Revision Orders, by referring to the clauses in the JDA dated 28-3-2011, trying to prove that the Binnypet Land held and contributed into JDA is stock-in-trade and not capital asset based on same set of facts and circumstances case, as held by many ITATs' and Courts, the Revenue should follow the course of consistency in such taxations cases.

* In the appellant's case, the learned Pr.CIT is of the opinion that the appellant is engaged in the business of real estate development, whereas the learned AOs' after examining the Financial statements of all the years and the terms of JDA, has come to a definite conclusion that the Binnypet Land is capital asset and income received therefrom is taxable under head capital gains. In that context, the appellant has brought to the notice of the learned Pr.CIT that in terms of CBDT Circular No.4/2007 and supported by several case laws, dual holding by an assessee is permissible.

13. Appellant's response to VII. The assessee's own admissions help the Revenue.

Reply to 7.1 Key admissions in the Assessee's Written Submissions (AWS)

(i) Para 1(g) of AWS – "no possession' form was used to avoid stamp duty

* In paras 16.4 (Reasons for not executing Sale Deed), 16.5 (Explanations on payment of inadequate stamp duty) and 16.6 (Receipt of Recovery Notice dated 23-12-2022) of AWS-1 dated 23-2-2026, the appellant has explained the above facts in detail. Since appellant has received full consideration and the stamp duty charges are to be borne by the Purchaser, at the specific request of the Purchaser, the appellant has agreed to execute the Agreement of Sale without Possession dated 27-5-2026 instead of Sale Deed and no legal possession clause in the said Agreement, but they made the said Agreement a comprehensive one like a sale deed. For paying short stamp duty, the Purchaser is gaining and not the appellant.

(ii) Para 15.3(iii) of AWS-1 the BHN Food Engagement Letter was never given to the AO

* In the queries dated 3-8-2022, the learned AO has asked for the justification of incurring the expenses and not the Engagement Letter, hence the same was not furnished to him. But the appellant has furnished copy of the same to the learned Pr.CIT. Further, in the fresh assessment proceedings under section 263 , there was no query or investigation on the sales commission paid to BHN Foods.

(iii) Para 16.10(i) of AWS- RPPL's possession came from the JDA License

* The appellant has not given legal possession but all other rights on the property sold have been extinguished in favour of the Developer vide Agreement of Sale. It is also a fact that the Land is under custody of the Developer, by way of license given under JDA. But when the Developer purchased the balance UDS and gave full sale consideration to the appellant, the said license has transformed into de-facto/constructive possession and the appellant has only withheld the de-jure possession in the Agreement of Sale, which would happen when the Conveyance Deed is executed in their favour. Is it possible for the appellant to get the

Developer vacated from the sold Land based on the no possession clause (13(d)) contained in Agreement of Sale by giving a notice on the present facts and circumstances of the case. But in the case of license given under JDA, the Landowners were having the right to terminate the JDA and get back the Land, in case of any breach of terms of the JDA specified therein including release of Revenue share. In the Agreement of Sale, the Sellers have no such right including specific performances.

* The appellant wish to submit here that t**he Honourable Supreme Court in case of Smt. Sarjo Agarwal vs CIT (1985) 23 Taxmann 76 (SC) (Page no.272-279 of Case Law Compilation No.1) in para-24 observed that** "***in construing taxation provisions, facts should be viewed in natural perspective having regard to the compulsion of the circumstances of a case. Too hyper technical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered."***

(iv) Para 12(v) of AWS : The Department's appeals for earlier years are pending before the High Court – the issue is not final

The Honourable Karnataka High Court has yet to hear the appeals and not granted any stay on the operations of ITAT Order dated 2-9-2022.

(v) Para 16.6 of AWS: Recovery of deficit stamp duty is pending before High Court – the adequacy of the instrument is itself in dispute.

* In para-12 to the AWS-2 dated 25-6-2026, the appellant has enclosed the relevant entries containing in the Karnataka Stamp Act Schedule wherein it has been provided that in an Agreement of Sale if a reference is made on the Power of Attorneys, the said Agreement would chargeable at the rate prescribed for such Power of Attorneys, which is equivalent to conveyance duty.

Reply to 7.2 An inconsistency in the Assessee's own case

* In previous paragraphs, the appellant has elaborately replied to the above point, particularly transfer issue and AO's silence. The Honourable Tribunal is kindly requested to consider the said submissions.

Reply to 7.3 The higher rate argument

* The learned Pr.CIT is not sure which is the correct head under which the sale consideration received under Agreement of Sale and he is directing the AO to find out the correct head whether it is income from other sources or business income. This inconclusive findings give credence to the fact that the primary intention of the learned Pr.CIT setting aside the assessment is to tax the said income at a higher rate either under head Income from Other Sources or Income from Business, as the case may be.

Reply to 7.4 Additional Evidence and Additional Grounds

Prior to the commence of scrutiny assessment proceedings for AY 2015-16 u/s 143(3), that is in the first year, the appellant has submitted to the then jurisdictional AO the audited Financial Statements for FYs 2008-2009 to 2014-15 vide its letter dated 17-2-2016 in response to their notice u/s 133C dated 11-2-2026 (Kindly refer to page no.7 and 8 of the Affidavit dated 7-4-2026 while submitting Additional Documents (Annexure 6 to 11). The learned Pr.CIT has also made a reference to said submission by the appellant before the AO, in his Revision u/s 263 dated 18-3-2020 passed for AY 2015-16. The Annexure 4 & 5 was submitted to learned AO in response to his 142(1) notice dated 19-1-2026 in the course of fresh assessment proceedings u/s 263 of the Act. In para-16 of the Affidavit (page no.6), the appellant has clearly mentioned that the learned Pr.CIT has not provided any opportunity to file its objections against the third issue – business income point. Therefore, this is not first time the appellant is submitting the above mentioned documents, as stated by the learned DR.

8. Appellant's response to the Case laws referred to by the learned DR in paras -3.2; 3.3 and 3.4 under heading III. The Law on Section 263

The appellant submissions is as follows:

3.2 Decisions on the Power to Revise – Cases laws referred to by learned DR

(i) Malabar Industrial Company Ltd. (2000) 243 ITR 83 (SC)

In the appellant's case, on examination of the records and submissions made by the appellant in response to Notices issued by the learned AO, that the sale consideration received vide Agreement of Sale dated 27-5-2019 is taxable under head Income from Capital Gains is a legally permissible view under Act. Hence, the assessment order is not erroneous as observed by the learned Pr.CIT in the revision order. In the above case, the Honourable Supreme Court has clearly laid down that once the views adopted by the AO is a plausible view, the assessment order cannot be treated as erroneous. The said decision in fact supports the case of the appellant and one of the condition "erroneous" is not satisfied.

(ii) Rampyari Devi Saraogi (1968) 67 ITR 84 (SC)

In this case, the learned CIT observing that the assessee had neither resided nor carried on any business from address declared in the Return and that ITO accepted the initial capital, gift received and sale of jewellery, income from business, etc. without any enquiry and evidence whatsoever. Therefore, the Honourable Supreme Court has upheld the decision of Delhi High Court upholding the revision proceedings initiated by CIT in a writ filed by the assessee. The above decision is not applicable to the facts of the appellant's case.

(iii) Tara Devi Agarwal vs CIT (1973) 88 ITR 323(SC)

In this case, the Honourable Supreme Court has observed that even where an income had not been earned and is not assessable, merely because the assessee wants it to beassessed in his or her hands in order to assist someone elsewho would

have been assessed to a larger amount, anassessment so made can certainly be erroneous andprejudicial to the interests of revenue. If so, theCommissioner, under s. 33B, had ample jurisdiction to cancelthe assessment and to initiate proceedings for assessmentunder the provisions of the Act against some other assesseewho, according to the income-tax authorities, is liable forthe income thereof. The above decisions is not applicable to the facts of the appellant's case.

(iii) ***Gee Vee Enterprises (1975) 99 ITR 375 (Del)***

In this case, Delhi High Court dismissed the writ petition filed by the assessee against the revision order u/s 263 of the CIT on the ground that the assessee has not filed any appeal against the said revision order. The said decision is comparable with the facts of the appellant's case.

(iv) M/s.Denial Merchants Pvt. Ltd. vs ITO (2018) 95 taxmann.com 366(SC) dated 29-11-2017

In the case of M/s. Denial Merchants Pvt. Ltd., the Honourable Supreme Court upheld the decision of Calcutta High Court wherein the Honourable High Court had confirmed the revision order of the CIT directing the AO to carry thorough and detailed inquiry on receipt of share application money by the assessee as the same relates to raising of bogus share capital and dismissed the SLP filed by the assessee. The said case is quite distinguishable with the facts and circumstances of the appellant's case and also differs on law points

(v) CIT vs Paville Projects Pvt. Ltd. (2023) 149 taxmann.com 15(SC) dated 6-4-2023

In the said case, the assessee company sold "Paville House" absolutely owned by it to discharge the encumbrances from the sale proceeds arising out of a family settlement to pay off the shareholders.The said assessee claimed the said discharge of encumbrances as cost of improvement against LTCG on sale of the said House. The AO accepted the said claim. Therefore, the CIT has invoked the revision

proceedings u/s 263 to disallow the cost of improvement contained in section 55(1)(b) of the Act. Since the assessee has discharged the encumbrances of the shareholders and not its debts, the Honourable Supreme Court upheld the revision order passed by the CIT. The said decision is quite distinguishable to the facts of the appellant's case.

(vi) Amitabh Bachchan (2016) 384 ITR 200 (SC) and Electro House (1971) 82 ITR 824(SC)

The appellant has made its submissions on the principles laid down by the Honourable SC in the above mentioned case in para-2 of its AWS-2 dated 25-6-2026 and no opportunity of hearing was provided to the appellant for inclusion of third/new issue in the revision order.

(vii) Swarup Vegetable Products (1991) 187 ITR 412 (All)

In this case, the AO without making proper inquiry accepted the claim of the assessee made in the ITR that refund received from Central Excise is not income. Therefore, CIT has directed the AO to conduct proper enquiry and decide the claim of the assessee. Honourable Allahabad High Court held that the CIT has exercised the revisionary powers validly. The said decision is not applicable to the facts of the appellant's case.

3.3 Decisions on the Correct Head of Income

(i) Seshasayee Steels (2020) 42 ITR 46 (SC)

The appellant has submitted the relevant paras contained in the above judgment supporting the case of the appellant in para-10 hereinabove.

(ii) Balbir Singh Maini (2017) 398 ITR 531(SC)

In para-10 herein above, the appellant has pointed out the relevant paras of the said judgement favouring the case of the appellant.

(iii) G.Venkataswami Naidu and Co. (1959) 35 ITR 594 (SC)

In para- 12.1 hereinabove, the appellant has submitted that the applicability of the test laid down by the Supreme Court in the above mentioned case was examined by Honourable Tribunal in its Order dated 2-9-2022 in the appellant's own case for AY 2015-16 and 2016-17 while considering whether the Binnypet Land contributed under JDA is capital asset and the taxability of income received from JDA is taxable under head capital gains and not as business income.

(iv) Raja J.Rameshwar Rao (1961) 42 ITR 179 (SC;' B.Ramaiah (1984) 146 ITR 39 (Kar); P.Kannan (1985) 154 ITR 441 (Kar) and P.M.Mohammed Meerakhan (1969) 73 ITR 735 (SC)

The appellant in its AWS-1 dated 24-2-2026 in para-20.7 at page no.64 has explained that all these case laws are not comparable to the facts of the appellant's case. The Honourable Tribunal is requested to kindly consider the same.

(v) Kedarnath Jute Mfg.Co. (1971) 82 ITR 363(SC)

This is the case laws referred to by the appellant in support of its submissions that the mistakes/errors committed in presenting an item in a balance-sheet or accounting entries do not deprive of the benefit available to the assessee under the relevant provisions of the Income-tax Act. But recording the nomenclature of an asset correctly based on the facts of the case, does not fall under the above categories. If this is permitted, then the entire entries in the books of accounts or presentation made in its audited financial statements can be questioned by the Revenue on the ground that the same does not represent true character of an asset and the income earned thereon.

(vi) PVS Beedies (1998 237 13 (SC)

The appellant has submitted its views in respect of the above mentioned decisions in para-9 of is AWS-2 dated 25-6-2026.

3.4 Other Decisions Directly on Point

3.4.1 **PCIT vs Kirti Anand (2025) 170 taxmann.com 585 (Punjab & Haryana HC – 19-11-2024)**

The appellant has submitted its views in respect of the above mentioned decisions in para-9 of its AWS-2 dated 25-6-2026.

3.4.2 Baljinder Singh vs PCIT (2026) 183 taxmann.com 572 (Chandigarh ITAT, 11-02-206)

The appellant submits that the facts of the case and the application of law involved in both cases are quite distinct. In this case, the Honourable ITAT has held that *(i) the assessment order to the extent it relates to interest on enhanced compensation was passed without proper inquiry and application of mind; (ii) The assessment order clearly demonstrates that the Assessing Officer has neither examined nor discussed the issue relating to the taxability of interest on enhanced compensation, nor has he made any reference whatsoever to the aforesaid decision of Movaliya Bhikhubhai Balabhai (supra) and there is no formation of opinion by relying upon said decision by the AO. (iii) The Honourable Tribunal has held that the Punjab & Haryana High Court, whose jurisdiction governs the assessee, has in the cases of Puneet Singh v. CIT and Mahender Pal Narang v. CBDT had categorically held that interest received on enhanced compensation is taxable under section 56(2)(viii) and does not form part of compensation. Once such binding judgments exist, the Assessing Officer is obliged to follow them. Non-consideration or non-application of binding jurisdictional High Court decisions renders the order erroneous within the meaning of section 263 read with Explanation 2(d).*

3.4.3 Raj Kumar Goyal vs PCIT (TS-7826-ITAT-2023 (Indore)-0) (Indore ITAT, 20-11-2023)

The appellant has submitted its views in respect of the above mentioned decisions in para-9 of its AWS-2 dated 25-6-2026.

3.4.4 Bhanvarlal Champalal Kanuga vs PCIT (TS-6235-ITAT-2024(Ahmedabad)-O) (Ahmedabad ITAT, 23-08-2024)

In this case, the ITAT has concurred with the PCIT's finding that the AO's Order was erroneous due to lack of enquiry into the exempt agricultural income, the source of payments towards the purchase of land and the cash deposits in the bank account. Therefore, the ITAT upheld the order of PCIT. In the appellant case, there is no lack of inquiry.

3.4.6 Himanshu Engineering Works vs PCIT (TS-6363-ITAT-2022 (Ahmedabad-O)(Ahmedabad ITAT, 18-05-2022)

In this case, the Honourable ITAT has observed that as pointed out in the revision order, there was omission on the part of the AO in not carrying out investigation on difference of Rs.24.74 Lakhs relating to reconciliation of total receipts under head Sales with partywise accounts reflected as job work receipts from the various parties. Another aspect was late deposit of employees of PF contribution beyond the due date prescribed under the relevant Act and its allowability under the provisions of the Act was not verified. These issues were not analysed by the AO during the course of assessment proceeding. Therefore, Honourable ITAT has upheld the order of passed by the PCIT. The facts of this case is quite distinguishable to the facts of the appellant's case.

3.4.7 M/s. Corporate Leisure & Property Development Pvt. Ltd. vs ACIT (TS-5915-ITAT-2024 (Bangalore-O) (Bangalore ITAT, 12-6-2024)

The appellant submits that in this case, *the learned Pr.CIT has observed that the assessee has changed his statement/ explanation regarding the nature of cash payments. At first instance it stated that the cash payments were in connection to booking of flats in "Sun City Gloria Project" but on later date, (during scrutiny*

proceedings) the assessee has changed the explanation to the cash payments as wages payments. He further observed that the later explanation does not match with the ledger accounts in books of assessee Company. The explanation of assessee appears to be an afterthought and fails to inspire confidence, hence liable to be rejected. It was required by the AO to treat the above amount of Rs.1.90 Crore as unexplained expenditure and charged to tax u/s 69C of the Act. However, the AO has failed to do so, thereby resulting in under assessment. Hence, the ld. PCIT observed that the assessment order dated 30-9-2021 reflects that no proper application of mind the AO. In other words, the assessment order passed by ld. AO lacks of judicial strength to stand on its own legs. It is not a case where the assessment order is short but it is not supported by judicial strength by making proper verification of the claim of the assessee. It is in this view of the matter that the Honourable ITAT were of the opinion that ld. PCIT properly exercised his revisional power u/s 263 of the Act. In the appellant's case the views taken by the learned AO on the facts of the appellant case is legally sustainable view and that of the learned Pr.CIT's view points are debatable one and hence cannot be compared.

3.4.8 Dalsukhbhai V Barbhaya vs PCIT (TS-6822-ITAT-2022 (Rajkot)-O)(Rajkot ITAT, 28-9-2022)

In this case, the AO accepted the assessee's explanation regarding gift of property between brothers without investigating the applicability of section 56(2)(vii)(b) or Section 50C on transfer documents vis-à-vis the facts of the case and it appears that based on lack of inquiry, the Honourable ITAT, Ahmedabad has upheld the revision order. The facts of the said case is not comparable with the facts of the appellant's case.

The appellant prays this Honourable Tribunal to consider the above written submissions in response to Revenue's Written Submission dated 25-6-2026, besides its previous Written Submissions dated 24-2-2026 and Additional Written submissions dated 25-6-2026 favourably and allow the appeal filed by the appellant for the advancement of substantial cause of justice.

Place: **Bengaluru**

Date : **7-07-2026 APPELLANT**

9. The ld. DR on the other hand heavily relied on the order of the ld. PCIT, Bengaluru-1 and vehemently submitted that the AO had failed to examine the issue in the right perspective by allowing the impugned transaction under the head LTCG which should have been taxed under the head of other sources or business as the activity carried on by the assessee firm were an adventure in nature of trade. The ld. DR also filed the written submission in support of his contention which is also reproduced below for ease of reference and convenience:-

Before The Hon'ble Income Tax Appellate Tribunal
' A ' Bench, Bangalore

In the case of

M/s ETA Star Infopark

IN

ITA No. 1194/BANG/2025 (Appeal by the Assessee)
Assessment Year : 2020-21

May it please Your Honours

Sub: Written Submissions on behalf of the Revenue in the case of M/s ETA Star Infopark, ITA No. 1194/Bang/2025 (Appeal by the Assessee), PAN AACFE6010C - reg.

Kindly refer to the above.

The written submissions on the above captioned subject are as under:

I. INTRODUCTION AND BACKGROUND

The Assessee appeals against the order dated **24.03.2025** passed by the Pr. CIT-1, Bengaluru under **Section 263** (*Revision Order*, at **Pages 29–41 of the Appeal Memo**), which set aside the assessment order dated 29.09.2022 (**Pages 42–47 of the Appeal Memo**) and directed a fresh assessment on the correct head of income.

Note on the order under appeal: this appeal lies directly against the Pr. CIT's order under Section 263. References below are therefore to the *Assessment Order* (***AO***), the *Revision Order* (***Pr. CIT***), the *Notice u/s 263*, the *Assessee's Written Submissions dated 23.02.2026* ("***AWS***"), the *Appeal Memo*, and *Paper Book No. 1* ("***PB-1***").

1.1 The Parties and the Asset

The Assessee is a partnership firm formed on 02.07.2008 by seven real-estate companies of the ETA Star group. Its only asset is about **42 acres at Binnypet, Bengaluru**, received as capital contribution from a group company, ETA Karnataka Estates Ltd. (Land Ledger, Annexure-4). The Partnership Deed describes the firm as *"engaged in business of real estate development"* (recorded at **para 1 of the Revision Order**).

1.2 The Transaction

In AY 2020-21 the Assessee sold undivided shares of this land to M/s Relationship Properties Pvt. Ltd. (**RPPL**) under an *"Agreement of Sale without Possession" dated 27.05.2019* (**Pages 17–47 of PB-1**), for its share of **Rs. 475.50 Crores**. It declared the gain of Rs. 460.69 Crores **as Long-Term Capital Gain (LTCG) taxed at 20%** and claimed brokerage of Rs. 11.22 Crores paid to M/s BHN Foods (**Pages 9–10 and 14 of PB-1**).

1.3 The Defect and the Revision

The assessment order (**Pages 42–47 of the Appeal Memo**) recorded **no finding at all** on three key matters: (a) whether the Agreement was a valid "transfer" under Section 2(47); (b) the correct head of income; and (c) whether the BHN Foods payment was genuine. The only addition made was Rs. 72,22,280 for business expense disallowance. The Pr. CIT therefore set the order aside under **Explanation 2(a) to Section 263** (**para 19 of the Revision Order**) and ordered a fresh assessment (**para 5, Conclusion and Directions**). The tax short-charged on the head-of-income issue is **Rs. 71.38 Crores** (*Issue 1*), and on brokerage Rs. 3.92 Crores (*Issue 2*).

II. TIMELINE OF KEY EVENTS

Sl.	Date	Event
1	02.07.2008	Firm formed; 28.9075 acres of Binnypet land received as capital contribution from ETA Karnataka Estates Ltd. (Annexure-4, Land Ledger).
2	01.06.2010	Further 13.0925 acres received as capital contribution (Annexure-4).
3	28.03.2011	JDA with RPPL for the 'Parkwest' project (Pages 249–315 of PB-1). Landowners' share 31% of net revenue (Assessee's share 26.323%); two Powers of Attorney granted (Pages 45–67 of PB-1).

4	11.12.2017	BHN Foods engaged as 'Consultant' (Engagement Letter at Pages 3–4 of PB-1). Never shown to the AO (admitted, para 15.3(iii) of AWS).
5	27.05.2019	Agreement of Sale without Possession executed; registered 20.06.2019 (Pages 17–47 of PB-1). Stamp duty only Rs. 20,000. Clause 13: possession NOT transferred (quoted at para 7 of the Notice u/s 263). Full price received.
6	05–06.07.2019	Brokerage of Rs. 11.22 Crores paid to BHN Foods (Pages 9–10 and 14 of PB-1).
7	07.01.2021	Return for AY 2020-21 filed, declaring Rs. 460.89 Cr as LTCG (Pages 144–210 of PB-1).
8	29.06.2021	Notice u/s 143(2); complete scrutiny under CASS (Pages 97–98 of PB-1).
9	03.08.2022	Second 142(1) notice with queries 5–8 (Pages 109–114 of PB-1); reply at Pages 121–143.
10	17.09.2022	AO's show-cause notice – confined ONLY to the Rs. 72,22,280 expense disallowance (Pages 228–229 of PB-1). No notice on the head of income.
11	29.09.2022	Assessment order u/s 143(3) (Pages 42–47 of the Appeal Memo). LTCG accepted with no recorded finding; only addition Rs. 72,22,280.
12	23.01.2025	Notice u/s 263 issued by Pr. CIT (Pages 48–50 of the Appeal Memo) – brokerage (paras 2–3) and characterisation (paras 4–8).
13	12.02.2025	Assessee files 58-page objections (Pages 51–110 of the Appeal Memo); hearing held.
14	24.03.2025	Revision Order u/s 263 (Pages 29–41 of the Appeal Memo). Assessment set aside under Explanation 2(a) (para 19); fresh assessment directed (para 5); brokerage submissions partly accepted (para 14, Page 35 of the Appeal Memo).
15	25.03.2026	Fresh assessment order. AO, after inquiry, assesses the income as business income; demand of Rs. 51.17 Cr (Annexure-12 of Additional Evidence).
16	07.04.2026	Assessee files Additional Evidence under Rule 29 (Annexures 2–12: RTI replies, historical accounts, fresh assessment order).

III. THE LAW ON SECTION 263

3.1 The Statutory Test

Section 263 lets the Pr. CIT revise an order that is both *erroneous* and *prejudicial to Revenue*. By **Explanation 2(a)** (in force from 01.06.2015), an order is treated as erroneous if it is passed "*without making inquiries or verification which should have been made.*" Para 19 of the Revision Order records exactly this – the AO "*failed to examine the issue in right perspective,*" causing a short levy of Rs. 71.38 Crores.

3.2 Decisions on the Power to Revise

- *Malabar Industrial Co. Ltd. (2000) 243 ITR 83 (SC)* – an order that accepts a claim without inquiry is both erroneous and prejudicial. Both conditions are met here.
- *Rampyari Devi Saraogi (1968) 67 ITR 84 (SC); Tara Devi Aggarwal (1973) 88 ITR 323 (SC)* – revision is justified where the AO should have made further inquiry before accepting the return.
- *Gee Vee Enterprises (1975) 99 ITR 375 (Del.)* – the AO is **an investigator, not only a judge**; he must find out the truth when the facts call for it.
- *Deniel Merchants P. Ltd. (2018) 95 taxmann.com 366 (SC)* – where the defect is **no inquiry**, sending the matter back for fresh inquiry is the correct remedy.
- *Paville Projects (2023) 149 taxmann.com 15 (SC)* – revision upheld where the AO allowed a capital-gains claim without examining its legal basis.
- *Amitabh Bachchan (2016) 384 ITR 200 (SC); Electro House (1971) 82 ITR 824 (SC)* – the Pr. CIT need not list every issue in the notice; only a hearing is required. This answers the natural-justice ground.
- *Sivaraj Vegetable Products (1991) 187 ITR 412 (All.); Duggal & Co. (1996) 220 ITR 456 (Del.)* – where the AO fails to inquire as the facts demand, revision and a fresh assessment are proper.

3.3 Decisions on the Correct Head of Income

- *Seshasayee Steels (2020) 421 ITR 46 (SC)* – a developer's licence-possession under a development agreement is **not** possession in part performance under Section 53A, so Section 2(47)(v) is not attracted.
- *Balbir Singh Maini (2017) 398 ITR 531 (SC)* – Section 2(47)(v) and (vi) are read strictly; a real transfer that lets the buyer enjoy the property as owner is required. Whether that test is met here was never examined.
- *G. Venkateswami Naidu & Co. (1959) 35 ITR 594 (SC)* – even a single land transaction is a business venture if the intention and surrounding facts point to commercial dealing.

- *Raja J. Rameshwar Rao (1961) 42 ITR 179 (SC); B. Ramaiah (1984) 146 ITR 39 (Kar.); P. Kannan (1985) 154 ITR 441 (Ker.); P.M. Mohammed Meerakhan (1969) 73 ITR 735 (SC)* - land dealt with for commercial gain, or put through a development scheme, yields business income; the owner need not do the construction himself.
- *Kedarnath Jute Mfg. Co. (1971) 82 ITR 363 (SC)* – book entries (such as "Capital WIP") do not decide the tax character of income.
- *P.V.S. Beedies (1999) 237 ITR 13 (SC)* – an audit note on a factual matter is valid material on which the Department may act.

3.4 Other Decisions Directly on Point

The following decisions – one from a High Court and several from co-ordinate ITAT benches – support each of the Revenue's submissions:

3.4.1 ***PCIT vs Kirti Anand [2025] 170 taxmann.com 585 (Punjab & Haryana HC, 19.11.2024)***

Held: The Punjab & Haryana High Court upheld a Section 263 revision triggered by audit objections. The Court held that the definition of "record" in Explanation 1(b) to Section 263 – "all records relating to any proceedings under this Act available at the time of examination by the Commissioner" – expressly includes audit objections. The ITAT had quashed the revision on the basis that the audit objection could not be part of the record; the High Court reversed this as an incorrect interpretation. Where the AO conducted no verification relating to the explanation to be forwarded by the assessee, the Commissioner's revision order could not be interfered with. Following *CIT vs P.V.S. Beedies Pvt. Ltd. (1999) 237 ITR 13 (SC)*.

3.4.2 ***Baljinder Singh vs PCIT [2026] 183 taxmann.com 572 (Chandigarh ITAT, 11.02.2026)***

Held (comprehensive recent decision on multiple grounds): **(a) No inquiry vs. inadequate inquiry:** "Mere calling for information and placing it on record does not constitute an enquiry under the law. What is required is a conscious examination of the issue, application of the relevant statutory provisions and formation of a reasoned view." **(b) Non-speaking order cannot be a "possible**

view": The "possible view" protection applies only where the AO adopted one of the permissible views after due enquiry and application of mind. "In fact assessment order is a non-speaking order on a crucial issue involving substantial tax implications. Accordingly, the protection available in cases of debatable issues is inapplicable." **(c) Audit trigger:** "Mere receipt of an audit objection does not, by itself, invalidate the exercise of revisionary powers. What is relevant is whether the PCIT, upon examination of the record, independently arrived at a satisfaction that the assessment order is erroneous." **(d) AO's proposal to PCIT:** Where the PCIT independently examined assessment records and formed satisfaction, the fact that the proposal originated from the AO does not render proceedings void. **(e) Section 151 approval does not bar Section 263:** "The scope and object of sections 148/151 and section 263 operate in distinct and independent statutory fields. Approval for reopening is only a prima facie administrative/quasi-judicial exercise... and does not amount to a final determination of the issue on merits."

3.4.3 ***Raj Kumar Goyal vs PCIT [TS-7826-ITAT-2023(Indore)-O] (Indore ITAT, 20.11.2023)***

Held: Facts available on record pointed out through the audit objection constitute "record" for Section 263 purposes. Invoking Section 263 on the basis of such facts "is not beyond the jurisdiction under Section 263, rather it is in conformity with the provisions of Section 263." Critically: "The decisions relied upon by the assessee are applicable only in a situation where the AO has conducted an inquiry on an issue and taken a possible view, whereas in the case of the assessee there is a complete lack of inquiry on the part of the AO" – in such a case the "possible view" doctrine has no application.

3.4.4 ***Bhanwarlal Champalal Kanuga vs PCIT [TS-6235-ITAT-2024(Ahmedabad)-O] (Ahmedabad ITAT, 23.08.2024)***

Held: Though the initial notice u/s 263 was issued based on an audit objection which the AO had not accepted, the PCIT carried out an independent inquiry. "The PCIT has invoked Explanation 2 to section 263(1) after concluding that the

order passed by the AO was subject to revision." The assessee furnished documents but failed to provide explanations to the issues raised in the revision – this further supported the finding that the AO's order lacked proper enquiry and verification.

3.4.5 ***Ramanbhai Bholidas Patel vs PCIT [2023] 148 taxmann.com 92 (Ahmedabad ITAT, 21.12.2022)***

Held: The AO "grossly allowed" a Section 54B exemption claim of Rs. 96.13 lakhs without making necessary inquiry as to whether the land was used for agricultural purposes in the two preceding years – a condition precedent for the exemption. Held: "Without application of the provisions of law, the Assessing Officer has granted the relief to the assessee which otherwise the assessee is not eligible for." The assessment order was "without any details and no information about the claim of deduction." Revision upheld. Deniel Merchants (SC) applied.

3.4.6 ***Himanshu Engineering Works vs PCIT [TS-6363-ITAT-2022(Ahmedabad)-O] (Ahmedabad ITAT, 18.05.2022)***

Held: Section 263 upheld where the AO failed to: (a) reconcile a difference of Rs. 24.73 lakhs between turnover shown under "Sales" and party-wise "job work" accounts; and (b) examine late deposit of employees' PF contribution despite unambiguous statutory language under Section 36(1)(va). "In our view, during the course of assessment proceedings, the AO did not verify certain details which in our view should have been done in order to assess the correct taxable income." Even where some issues were inquired into, clear omissions on specific quantifiable issues justify revision.

3.4.7 ***M/s Corporate Leisure & Property Development Pvt Ltd vs ACIT [TS-5915-ITAT-2024(Bangalore)-O] (Bangalore ITAT, 12.06.2024)***

Held: Section 263 confirmed. Key observations: (a) "The AO absolutely closed his eyes for the reasons best known to him and accepted the submission of the assessee without verifying the same at the face of it." **(b)** "Adopting one of the courses permissible in law necessarily requires the Assessing Officer to

consciously analyse and evaluate the facts in the light of relevant law and bring them on record. It is only then that he can be said to have adopted or chosen one of the courses permissible in law. The Assessing Officer cannot be presumed or attributed to have adopted a course permissible in law when his order does not speak in that behalf." Accordingly, the AO cannot be deemed to have "taken a possible view" when he has not examined whether one or more views were possible in the first place.

3.4.8 ***Dalsukhbhai V Barbhaya vs PCIT [TS-6822-ITAT-2022(Rajkot)-O] (Rajkot ITAT, 28.09.2022)***

Held: The AO accepted the assessee's explanation regarding gift of property between brothers without investigating: (a) the ownership history and sources of original purchase; (b) the applicability of Section 56(2)(vii)(b); and (c) the applicability of Section 50C on transfer. Documents were submitted but not examined in depth. Held: "The AO did not apply his mind on the applicability of provisions of Section 50C or 56(2)(vii)(b)." Revision upheld – the AO should have examined the facts in detail "after due application of mind."

IV. REPLY TO THE GROUNDS OF APPEAL

A. Jurisdiction – a silent order is not saved by "complete scrutiny" **(Grounds 1–8)**

- **No finding on the key issue.** The assessment order **(Pages 42–47 of the Appeal Memo)** does not contain a single line on Section 2(47), Clause 13, the stamp-duty point, or the head of income.
- **Asking for documents is not inquiry.** Queries 5–8 of the 142(1) notice dated 03.08.2022 **(Pages 109–114 of PB-1)** only sought copies and figures. Collecting papers is not the same as examining the law. *(Gee Vee Enterprises [1975] 99 ITR 375 (Delhi)[07-10-1974] ; Baljinder Singh [2023] 157 taxmann.com 739 (Chandigarh - Trib.)[02-08-2023])*
- **No show-cause on the Rs. 460 Crore issue.** The AO's only show-cause notice dated 17.09.2022 **(Pages 228–229 of PB-1)** was about the Rs. 72 lakh expense; the head-of-income question was never put to the Assessee.

- **"Possible view" needs a view.** The protection in *Max India [2004] 268 ITR 128 (Punjab & Haryana)/[2004] 191 CTR 397 (Punjab & Haryana)[18-05-2004]* applies to a considered choice between two options. Silence is not a view. The Assessee's claim that the AO "verified the details and came to a conclusion" **(para 4.3(ii) of AWS)** is an inference drawn from silence.
- **The earlier ITAT order does not help.** The order dated 02.09.2022 **(Pages 1–73 of Case Law Compilation No. 1)** is pending before the Karnataka High Court (admitted, **para 12(v) of AWS**) and dealt with periodic JDA revenue for AYs 2015-16/2016-17 – not the 2019 Agreement now in issue and further the Section 2(47)(v)/(vi) question on this instrument has not been adjudicated by any forum.

B. Section 263(1) Expressly Authorises Remand for Fresh Inquiry (Grounds 9–11)

- Section 263(1) lets the Pr. CIT **cancel the assessment and order a fresh one**. Where the defect is no-inquiry, that is the proper course. *Deniel Merchants [2018] 95 taxmann.com 366 (SC)[29-11-2017]; Swarup Vegetable Products [1991] 54 Taxman 175 (Allahabad)/[1991] 187 ITR 412 (Allahabad)/[1990] 90 CTR 113 (Allahabad)[22-08-1990]*)
- The direction is **specific, not a roving inquiry**: verify the "treatment of income" under the Agreement dated 27.05.2019 **(para 5 of the Revision Order, Conclusion and Directions)**.

C. Natural justice was fully met (Grounds 19–20)

- *Amitabh Bachchan [2016] 69 taxmann.com 170 (SC):* the Pr. CIT is not limited to the issues in the notice; a hearing is enough. The Assessee in fact argued the business-income point in its 58-page objections dated 12.02.2025 **(Pages 51–110 of the Appeal Memo). There is no prejudice.** Page 61 –
- The Assessee's reliance on *Pr. CIT v. Universal Music India (P.) Ltd.* [2023] 155 taxmann.com 230 (Bom.) (SLP dismissed: [2023] 155 taxmann.com 231 (SC)) is misplaced. That decision **affirms, and does not dilute, *Amitabh Bachchan***: the High Court expressly reiterated that Section 263 requires no show-cause notice and that only an opportunity of hearing is needed. It turned on the narrow, fact-

specific finding that the assessee there was **never confronted at all** with the third issue (payments under Section 40A(2)(b)), an issue wholly outside the notice - a finding the Court declined to disturb for want of perversity. Here the converse is true: the characterisation of income under the 2019 Agreement was squarely raised at **paras 4–8 of the Notice u/s 263**, and the Assessee filed detailed **58-page objections dated 12.02.2025** meeting that very issue. The opportunity of hearing found wanting in *Universal Music* was here fully afforded, so its ratio tells against the Assessee, not for it.

- The Supreme Court, moreover, dismissed the SLP on a **delay of 411 days** in a one-line order, holding it dismissed "both on the ground of delay as well as on merits". On the principle in *Kunhayammed v. State of Kerala* [2000] 245 ITR 360 (SC), a dismissal so founded lays down no binding ratio on the merits and leaves *Amitabh Bachchan* – and the settled law that Section 263 needs only a hearing, not a notice confining the Pr. CIT – wholly untouched.
- In any event, in the instant case the operative direction of PCIT rests on the characterisation of income under the Agreement - an issue squarely raised at **paras 4–8 of the Notice u/s 263**. Even setting aside every business-income observation, the Revision Order stands.

D. BHN Foods brokerage of Rs. 11.22 Crores (Ground 13)

- **The basic contract was never seen by the AO.** The Assessee admits at **para 15.3(iii) of AWS** that the Engagement Letter (**Pages 3–4 of PB-1**) was not produced. A Rs. 11.22 Crore deduction was allowed without the AO seeing it.
- **BHN Foods is a food business** with no shown real-estate experience, engaged to negotiate with RPPL - the Assessee's own JDA partner since 2011. Genuineness was never tested. Para 14 of the Revision Order (**Page 35 of the Appeal Memo**) accepts only that ledger extracts and bank statements were filed – not that the AO's verification was adequate.

E. The transfer question was never examined (Grounds 12, 14–18)

- **Clause 13 of the Agreement says possession was not transferred.** (Pages 17–47, PB No.1): 'The possession of the Property hereby agreed to be sold **has not been transferred** by the sellers to the purchaser on execution of this Agreement.'
- The clause is quoted at **para 7 of the Notice u/s 263**. Section 2(47)(v) needs possession given in part performance under Section 53A of the Transfer of Property Act.
- ***Seshasayee Steels (P.) Ltd. vs. Assistant Commissioner of Income Tax, Company Circle VI(2), Chennai [2020] 115 taxmann.com 5 (SC)***: a developer's licence-possession under a JDA is **not** such possession. So the Assessee's own plea that RPPL held the land under the JDA licence (**para 16.10(i) of AWS**) **defeats** its transfer argument.
- **Token stamp duty of Rs. 20,000** (against about Rs. 34 Crores for a sale deed) was chosen to avoid conveyance duty (admitted, **paras 1(g) and 16.4(ii) of AWS**). Recovery of the deficit duty (notice at **Pages 15–16 of PB-1**) is pending before the Karnataka High Court.
- *Balbir Singh Maini [2017] 86 taxmann.com 94 (SC)*: whether a real "transfer" took place is a serious legal question – **exactly what the AO failed to examine.**

F. Audit objection (Additional Grounds)

- ***P.V.S. Beedies [1999] 103 Taxman 294 (SC)*** **and** ***Kirti Anand [2025] 170 taxmann.com 585 (Punjab & Haryana)[19-11-2024]***: an audit objection is valid material and forms part of the "record". A trigger from audit does not make the revision invalid.
- **The Pr. CIT applied his own mind** – he analysed the JDA clauses (**para 17 of the Revision Order**), computed the short levy (*Issues 1 and 2*), and **partly accepted** the Assessee on brokerage (**para 14**). That is independent application of mind, not mechanical adoption.
- The decisions quoted in **Para 3.4.1 to 3.4.4** above support the stand of the Revenue with regard to audit objection.

V. THE INCOME IS BUSINESS INCOME (FROM THE ASSESSEE'S OWN RECORDS)

The Assessee's own Additional Evidence (Annexures 4–12) was filed to show "Capital WIP" treatment, but it **supports the Revenue**. The records show a single, profit-driven real-estate venture – a **business venture under Section 2(13)** – whose income is taxable at 30%, not 20%.

5.1 The firm was built for development

- The Partnership Deed describes the firm as in the **business of real estate development (para 1 of the Revision Order)**.
- All seven partners are realty companies, and the firm's name is **"ETA Star Infopark"**. The land was first received *"to set up an Infopark project,"* and Rs. 47,04,841 was spent in FY 2008-09 alone on feasibility studies (admitted, **paras 19.3(i)-(ii) and 19.8(i) of AWS**).
- The firm was formed on the very day it received the first tranche of land – 02.07.2008 (Land Ledger, Annexure-4). Under *Venkataswami Naidu (SC)*, the intention at the time of acquisition is the key test, and that intention here was commercial development.

Land Ledger (Annexure-4):

Date	Contribution	Area	Area (Sq.ft)	Value (Rs.)
02.07.2008	1st – ETA Karnataka Estates Ltd	28.9075 acres	1,25,92,115	2,99,13,360
01.06.2010	2nd – ETA Karnataka Estates Ltd	13.0925 acres	5,70,309	1,35,48,026
Total	**Binnypet Land**	**42 acres**	**1,96,62,424**	**4,34,61,326**

5.2 When the Infopark failed, the land was re-used, not retired

- The Assessee admits **(para 19.3(iii) of AWS)** that the Infopark plan was dropped and the land was then put into the JDA dated 28.03.2011 **(Pages 249–315 of PB-1)** for the Parkwest project. **Replacing one development plan with another continues the same business venture; it is not a switch to investment.**
- The accounts confirm this. While the Infopark plan was idle the land was shown as "Fixed Assets"; **the moment the JDA was signed it was moved back to "Capital**

WIP" – the place in a balance sheet for a project under development (Annexures 8 and 9).

5.3 The JDA terms are those of a profit-sharing business

The JDA covenants are recorded at para 17 of the Revision Order and confirmed at para 19.9 of AWS:

- **Revenue share, not price.** The landowners took 31% of net revenue (Assessee's share 26.323%) as flats were sold over the project's life. A share of turnover is a share in business profits, not a fixed price for a capital asset.
- *"Net revenue"* was defined to capture sale proceeds, lease income, car-parking and club receipts, and infrastructure charges **(para 19.9(b) of AWS)**.
- **Minimum guaranteed rate of Rs. 4,800/sq.ft.** – the Assessee secured a minimum commercial yield, the conduct of a venturer.
- **Non-compete clause and active duties.** The Assessee agreed not to compete and to help modify the building plan with the BDA – features of a business, not a passive investment.
- **Rs. 180 Crores deposit** was shown in the Assessee's own balance sheet as *"Advance Received from Customers"* (Schedule 3, Annexure 8) – treating RPPL as a customer.

5.4 The Assessee's own accounting and tax conduct treated this as business

(A) Receipts shown as operational income

In its accounts for FYs 2015-16 and 2016-17, the JDA receipts were shown as *direct / operational income* in Schedule-8 (admitted, **para 20.5 of AWS**; also *Issue 1 of the Revision Order*) – the Assessee's own description of the income at the time, before any litigation.

(B) Land cost absorbed year by year, like trading stock

Annexure 5 shows the cost of land being written off against receipts every year until it reached nil:

Financial Year	Land Cost (Rs.)	Closing Balance (Rs.)	Absorbed in Year (Rs.)	Cumulative (Rs.)

2013-14 (Baseline)	**4,34,61,326**	**5,57,32,724**	**—**	**—**
2014-15	4,13,14,772	5,29,80,086	27,52,638	27,52,638
2015-16	3,78,60,083	4,85,75,605	44,04,481	71,57,119
2016-17	3,38,92,257	4,32,05,337	53,70,268	1,25,27,387
2017-18	3,10,80,710	3,98,56,414	33,48,923	1,58,76,310
2018-19	2,79,17,432	3,57,99,978	40,56,436	1,99,32,746
2019-20	**—**	**NIL**	**3,57,99,978**	**5,57,32,724**

Why this matters: a capital asset is held at cost until it is sold, when the whole cost is set off in one go. Here the cost was **used up year by year against receipts** until it reached nil – the behaviour of *trading stock*, not an investment. **Para 17 of the Revision Order** noted that the value "kept on varying each year," exactly as stock does with sales.

(C) Business loss claimed in the returns

The Assessee claimed its general expenses as a loss under **Schedule BP (Business & Profession)** and set it off every year, including Rs. 72,22,280 in AY 2020-21 (admitted, **paras 19.2(iv) and 20.6 of AWS**). A firm that claims business loss on oath cannot say it carried on no business.

(D) No capital gain offered when the JDA was signed

On the Assessee's own theory (land = capital asset; JDA possession = transfer), capital gains should have arisen in AY 2011-12. None was offered (**Issue 1 of the Revision Order**) – consistent only with the land being stock of a venture.

5.5 The capitalised expenses are development costs, not holding costs

The Rs. 1.22 Crore of expenses added to Capital WIP (sub-schedules to Annexures 6-11) includes **feasibility studies, environmental clearance, SEZ processing fees, surveys, and Rs. 98.34 lakhs of professional fees** (to Nagadi Consultants and CB Richard Ellis). A passive investor does not commission these; **a developer does.**

Expense	Nature	Investor or Developer?
Feasibility studies	Testing the viability of the Infopark/IT-SEZ project	**Developer only**

Environmental clearance	Needed for construction; irrelevant to holding land.	**Developer only**
SEZ processing fees	Application for IT-SEZ status – a developer/operator activity.	**Developer only**
Survey expenses	Surveys for development planning and layout.	**Developer only**
Professional fees (Rs. 98.34 lakhs)	Paid to specialist real-estate advisers – far beyond ordinary due diligence.	**Developer only**

5.6 The 2019 sale monetised business receivables, priced on future revenue

- BHN Foods was engaged to find a buyer for the Assessee's *"future receivables"* from the project (**para 15.3(i) of AWS**) – the income stream, not land.
- The price was fixed on the **net present value of those future receivables (para 15.5(iii) of AWS)**. A capital asset is priced on market value; a business stream is priced on NPV.
- The Assessee's own pleadings call the subject-matter the *"balance unsold"* UDS **(para 19.2(v) of AWS)** – the language of project stock.
- **The full life-cycle is a single trading venture:** acquire project land (2008–10) → attempt own development (Infopark) → put it into the JDA (2011) → take revenue share as units sell (2014–19) → sell the balance receivables for a lump sum on NPV (2019).

5.7 The fresh assessment confirms business income

On the fresh assessment directed by the Pr. CIT, the AO – after the inquiry that was missing earlier – assessed the whole income as business income (order dated 25.03.2026, **Annexure-12 of Additional Evidence**):

Particulars	**Amount (Rs.)**
Income assessed as business income	4,60,69,43,333
Tax @ 30% (with surcharge and cess)	1,60,98,50,278
Tax @ 20% (as originally returned)	1,07,32,33,518
Additional demand (30% vs. 20%)	**53,66,16,760**
Net demand notice u/s 156 dated 25.03.2026	**51,17,38,621**

The Assessee itself filed this order (**Annexure-12**). It shows that **when the directed inquiry was actually done, it confirmed the Revenue's case.** (The validity of the

Section 263 order is judged on the record as it stood in March 2025; this later order is confirmatory on the merits.)

5.8 If it is business income, the transfer debate falls away

If the land was stock of a business venture, Section 2(14) takes it out of "capital asset," Section 45 does not apply, and the receipt is taxed under Section 28 at 30%. The Assessee's long argument on Section 2(47) **assumes the very point in dispute** – that the land was a capital asset. The Pr. CIT rightly left both questions open for inquiry (**para 5 of the Revision Order**).

5.9 Rebuttal to the Assessee's main arguments

- *"We never developed the land ourselves"* (***para 19.2 of AWS***). Development through a developer under a revenue-sharing JDA is still commercial use of the land. *(Mohammed Meerakhan, [1969] 73 ITR 735 (SC)[12-02-1969])*
- *"Books always showed Capital WIP"* (***para 19.3 of AWS***). Entries do not decide character *(Kedarnath Jute [1971] 82 ITR 363 (SC)[17-08-1971])*; and Capital WIP itself denotes a project under development, not an investment.
- **"Scrutiny accepted LTCG in AYs 2015-16 to 2018-19":** Res judicata does not apply to income-tax assessments; each year stands alone. The Department's challenge is alive before the Karnataka High Court; and AY 2020-21 involves a fundamentally different transaction – lump-sum monetisation of unsold UDS on NPV, not periodic revenue share.
- "Dual holding is permissible" (CBDT Circular 1/2007): Permissibility of dual holding confirms classification is a question of fact requiring inquiry – the inquiry the AO never conducted, which is the whole justification of the s.263 order.

VI. REPLY TO THE CASE LAW CITED BY THE APPELLANT

The cases relied on by the Assessee either support the Revenue or are distinguishable on facts:

- ***Malabar Industrial (SC) (2000) 243 ITR 83*** – Supports Revenue. Both conditions – error and prejudice – are met.
- ***Max India (2008) 166 Taxman 188*** – Distinguishable. It protects a considered view; here the order records no view at all.
- ***Shreeji Prints (2021) 130 taxmann.com 294; Nirav Modi [2017] 291 CTR 245 (Bombay)[16-06-2016]*** – Distinguishable. The AO there had actually inquired into the specific issue; here there was no inquiry on characterisation.
- ***V-CON Integrated Solutions SLP (C) 13205/2025*** – Supports Revenue. It allows remand where the AO's inquiry was "superficial and random" – as recorded in para 19 of the Revision Order.
- ***ITAT order dated 02.09.2022*** – Not binding – pending before the High Court, and concerned periodic IDA revenue, not the 2019 Agreement.
- ***Podar Cement [1997] 92 Taxman 541 (SC)*** – Concerns Section 22 (house property); it does not define "transfer" for Sections 45/2(47).
- ***Balbir Singh Maini (2017) 398 ITR 531; Seshasayee Steels (2020) 421 ITR 46*** – Support Revenue. "Transfer" under Section 2(47) is a real legal test that had to be examined; licence-possession is not enough.
- ***Sanjeev Lal [2014] 46 taxmann.com 300 (SC)*** – Distinguishable – a hardship case on Section 54 timing; it does not hold that every agreement without possession is a transfer.
- ***Jupiter Capital [2025] 170 taxmann.com 305 (SC); Grace Collis [2001] 115 Taxman 326 (SC)*** – Both assume the asset is a capital asset – which is the very question left open here.
- ***Saroj Aggarwal [1985] 23 Taxman 76 (SC); Bhopal Sugar [1960] 40 ITR 618 (SC)[02-09-1960] ; Super Poly Fabriks(2008) 14 STT 249 (SC)*** – Substance-over-form cuts against the Assessee: full price taken, possession withheld, token stamp duty to dodge conveyance duty.
- ***CIT v. Dhanajgiri Raja Narasingirji [1973] 91 ITR 544 (SC)and Sassoon J David & Co. (P.) Ltd. v. CIT [1979] 118 ITR 261*** – Commercial-expediency cases do not help; the objection is that the BHN Foods payment's genuineness was never tested.

- *Kaushalya Devi [2025] 175 taxmann.com 201 (Kolkata - Trib.); Sunil Kapoor [2024] 161 taxmann.com 748 (Delhi - Trib.); Fozia Khan [2020] 119 taxmann.com 187 (Jaipur - Trib.)*– Brokerage cases where documents were examined by the AO – unlike here, where the contract was withheld.
- *United Commercial Bank [1957] 32 ITR 688 (SC); D.P. Sandu [2005] 142 Taxman 713 (SC); Nalinikant Mody [1966] 61 ITR 428 (SC)* – Mutual-exclusivity of heads applies only once income is shown to fall under a head; whether it falls under Capital Gains at all is the open question.
- *H. Anil Kumar* **[2012] 20 taxmann.com 430(Karnataka);** *A. Suresh Rao* **[2014] 41 taxmann.com 475(Karnataka);** *Laxmidevi Ratani* **[2005] 147 Taxman 642 (Madhya Pradesh)** – All assume the asset is on capital account – the contested premise.
- *IDA/landowner line: Razia Sulaiman* **[IT Appeal No. 412 of 2007, dated 19-10-2011];** *CIT vs Suparna Mahesh ITA No. 3231 of 2005 - Date of Order - 8-2-2011; Muppala Bhaskar Reddy* **ITA No.909/Bang/2019** – Each turned on a finding that the owner held land as investment. Here the Pr. CIT recorded the opposite indicators – a question for fresh inquiry.
- *Ashish Rajpal [2009] 180 Taxman 623 (Delhi); Centimeters Electricals Ltd [2009] 178 Taxman 422 (Delhi);* ***CCIT v. Peerless Consultancy Services (P.) Ltd.*** **[1990] 186 ITR 609/[1991] 54 Taxman 68** *(Calcutta)*– Overtaken by Amitabh Bachchan *(2016) 384 ITR 200*: the Pr. CIT is not confined to the notice.
- *Sohana Woollen Mill [2008] 296 ITR 238 (Punjab & Haryana); Jaswinder Singh [2013] 31 taxmann.com 80 (Chandigarh - Trib.)* – Condemn mechanical adoption of audit notes – not this case, where the Pr. CIT applied his own mind.
- *Suchin Jaiswal [2025] 2 S.C.R. 1396 : 2025 INSC 275 ; G. Parthasarthy Naidu [1999] 104 Taxman 197 (SC)* – Firm-ownership cases do not decide whether the firm held the land as investment or stock – a question of conduct.

VII. THE ASSESSEE'S OWN ADMISSIONS HELP THE REVENUE

7.1 Key admissions in the Assessee's Written Submissions (AWS)

- **Para 1(g) of AWS:** the "no-possession" form was used to avoid about Rs. 34 Crores of stamp duty – a form chosen to dodge a completed conveyance.

- **Para 15.3(iii) of AWS**: the BHN Foods Engagement Letter **(Pages 3-4 of PB-1)** was never given to the AO.
- **Para 16.10(i) of AWS:** RPPL's possession came from the JDA licence – which, under *Seshasayee Steels (2020) 421 ITR 46*, is not possession in part performance.
- **Para 12(v) of AWS:** the Department's appeals for earlier years are pending before the High Court – the issue is **not final**.
- **Para 16.6 of AWS:** recovery of deficit stamp duty (notice at **Pages 15–16 of PB-1**) is pending before the High Court – the adequacy of the instrument is itself in dispute.

7.2 An inconsistency in the Assessee's own case

The Assessee argues both that (a) the AO examined the transfer issue and took a view, and (b) 40 pages of argument are now needed to show the Agreement is a "transfer." **If the issue needs that much analysis, the AO's silence cannot have been a considered decision**. The depth and length of the Assessee's own defence proves the inquiry was needed.

7.3 The "higher rate" argument

The 20% vs. 30% gap is the very prejudice that Section 263 exists to correct. Recovering the lawful Rs. 71.38 Crore short levy is the discharge of duty, not bad faith.

7.4 Additional Evidence and Additional Grounds

The Respondent objects to the admission of the Additional Evidence (Annexures 2–12) and the Additional Grounds. The response of the PCIT to the additional evidence and the additional grounds is enclosed as Annexure 1. The audited accounts and Capital WIP schedules now produced are historical records that could have been filed before the AO or the Pr. CIT; material never produced below cannot be introduced now before ITAT to dislodge findings reached on the then-existing record – Rule 29 of the ITAT Rules, 1963 is not satisfied. The Additional Grounds were never urged before the Pr. CIT and, being purely legal, do not alter the factual matrix or displace the core finding of no enquiry by the AO; the audit point is in any event answered at

Section IV-F and para 4.2 above, the RTI correspondence showing only that audit objections existed, not that the order was passed mechanically.

Nor does the accounting treatment assist: book classification cannot fix the true character of the asset, which turns on substance and conduct *(Kedarnath Jute Mfg. Co. (1971) 82 ITR 363 (SC))*, and does not cure the absence of enquiry. That the consequential assessment dated 25.03.2026 has since treated the land as stock-in-trade and the income as business income (Annexure-12) only confirms the Pr. CIT's findings were neither hypothetical nor unfounded. The application for additional evidence should therefore be rejected and the appeal decided on the material before the Pr. CIT; **if admitted, however, the evidence only strengthens the Revenue's case**, as shown in Section V.

The Respondent objects to the Additional Evidence filed on 07.04.2026: the old accounts could have been produced earlier, and the fresh assessment order post-dates the Revision Order and cannot affect its validity. **If admitted, however, this evidence only strengthens the Revenue's case**, as shown in Section V.

SCHEDULE OF DOCUMENT REFERENCES

For ease of reference, the key documents relied on, with their locations, are tabulated below.

Document	Key paras / clauses	Location
Assessment Order dated 29.09.2022 (AO)	LTCG accepted, only addition Rs. 72,22,280; no finding on Section 2(47) or head of income	Pages 42–47, Appeal Memo
Revision Order dated 24.03.2025 (Pr. CIT, u/s 263)	Para 1 (firm engaged in real estate); para 17 (JDA covenants); para 19 (Explanation 2(a)); para 5 (fresh assessment); para 14 / Page 35 (brokerage); Issues 1 & 2 (short levy)	Pages 29–41, Appeal Memo
Notice u/s 263 dated 23.01.2025	Paras 2–3 (brokerage); paras 4–8 (characterisation); para 7 (Clause 13, possession not transferred)	Pages 48–50, Appeal Memo
Assessee's Written Submissions dated 23.02.2026 (AWS)	Paras 1(g), 4.3(ii), 12(v), 15.3(i), 15.3(iii), 15.5(iii), 16.4(ii), 16.6,	Filed before ITAT

	16.10(i), 19.2–19.3, 19.8(i), 19.9(b), 20.5, 20.6	
Objections dated 12.02.2025	58-page objections before the Pr. CIT	Pages 51–110, Appeal Memo
Joint Development Agreement (JDA) dated 28.03.2011	Revenue share, minimum guarantee, non-compete	Pages 249–315, PB-1
Powers of Attorney (28/30.03.2011)	Granted to the Developer	Pages 45–67, PB-1
BHN Foods Engagement Letter dated 11.12.2017	Sale of "future receivables"; never shown to AO	Pages 3–4, PB-1
Agreement of Sale without Possession dated 27.05.2019	Clause 13: possession not transferred	Pages 17–47, PB-1
Brokerage payment records	Rs. 11.22 Crores to BHN Foods	Pages 9–10 & 14, PB-1
Return of income (AY 2020-21)	Rs. 460.69 Cr declared as LTCG	Pages 144–210, PB-1
142(1) notice dated 03.08.2022 & reply	Queries 5–8, reply 19.09.2022	Pages 109–114 & 121–143, PB-1
AO show-cause notice dated 17.09.2022	Confined to Rs. 72,22,280 expense only	Pages 228–229, PB-1
Stamp-duty recovery notice dated 23.12.2022	Deficit duty; pending in High Court	Pages 15–16, PB-1
ITAT order dated 02.09.2022 (AYs 2015-16/16-17)	Pending before Karnataka High Court	Pages 1–73, Case Law Compilation No. 1
Fresh Assessment Order dated 25.03.2026	Income assessed as business income; demand Rs. 51.17 Cr	Annexure-12, Additional Evidence
Historical financial statements & Land Ledger	Capital WIP, cost-absorption, development expenses	Annexures 4–11, Additional Evidence

VIII. PRAYER

In view of the above, the Respondent respectfully prays that this Hon'ble Tribunal may be pleased to:

- dismiss the appeal, the Revised Grounds and the Additional Grounds;
- uphold the Order under Section 263 dated 24.03.2025 passed by the Pr. CIT-1, Bengaluru;
- decline to admit, or give no weight to, the Additional Evidence which could have been produced earlier; and
- pass such further orders as the interests of Revenue and justice may require.

Yours faithfully,

(Somanath S Ukkali.)
Commissioner of Income Tax (DR),
ITAT-1, Bangalore.

Bangalore: 25.06.2026

Copy to: The Ld.AR

Subject: **Fwd: Re: Fwd: Assessee's appeal in ITA No. 1194/Bang/2025., ETA Star Infopark, PAN: AACFE6010C- A.Y. 2020-21- reg.**
To: "BANGALORE CIT[ITAT]-1, Bangalore" <bangalore.cit.itat1@incometa
Cc: DCIT CIRCLE-1 BANGALORE <bangalore.dcit1.1(1).1@incometax.gov.in>
(1) (1) <>,
"DC/ACIT HQ PCIT-1, BANGALORE" <BANGALORE.DCITHQ.PCIT1(
PCIT BANGALORE-1 <bangalore.pcit1@incometax.gov.in>
Date: 06/12/26 12:16 PM
From: "bangalore.addlcit1.1" <bangalore.addlcit1.1@incometax.gov.in>

Respected Sir,

Please find the Remand Report submitted by ACIT, Circle-1(1(1), Bangalore wherein the AO has discussed in detail and giving a point wide reply to all the objections raised by the assessee. The Remand Report is forwarded for kind consideration and necessary action at your end.

--
Regards,

D.S. Karthik, IRS
Addl.Commissioner of Income Tax
Range-1(1), Bangalore.

------ Original Message ------
From: **"BANGALORE CIRCLE 1(1)[1], BANGALORE"** <bangalore.dcit1.1.1@incometax.gov.in>
Date: Jun 11, 2026 5:32:03 PM
Subject: Re: Fwd: Assessee's appeal in ITA No. 1194/Bang/2025., ETA Star Infopark, PAN: AACFE6010C- A.Y. 2020-21- reg.
To: "D.S. Karthik" <bangalore.addlcit1.1@incometax.gov.in>

To
The Commissioner of Income Tax,
ITAT-1, Bengaluru.
(Through Addl. Commissioner of Income Tax, Range-1(1), Bengaluru)

Sir,

Sub: Submission of Remand report in the case of M/s ETA Star Infopark/PAN: AACFE6010C) for AY 2020-21 - Reg.

****

1. I am herewith submitting the remand report called for in the above mentioned case as under.
2. Additional ground 1:

"The learned Pr. Commissioner of Income-tax is not justified in exercising revisionary powers under section 263 of the Act as the entire proceeding is without jurisdiction and not in accordance with law on the facts and circumstances of the case."

The contention of the assessee that the Ld PCIT lacked jurisdiction to invoke section 263 is not tenable. The assessment order dated 29.09.2022 was examined by the Principal Commissioner in exercise of powers conferred under section 263 of the Act. On examination of the assessment records, it was found that the Assessing Officer had accepted the assessee's claim of Long-Term Capital Gain arising from the Binnypet land transaction without carrying out adequate inquiry and verification regarding the true nature of the transaction. The Assessing Officer had failed to examine whether the income was assessable under the head "Capital Gains" or "Profits and Gains of Business or Profession".

Explanation 2(a) to section 263 specifically provides that an order passed without making inquiries or verification which should have been made shall be deemed to be erroneous in so far as it is prejudicial to the interests of Revenue. Therefore, the jurisdictional conditions prescribed under section 263 stood fully satisfied. The Principal Commissioner has recorded detailed reasons, examined the assessment records, considered the submissions of the assessee and thereafter exercised revisionary jurisdiction. Hence, the assumption of jurisdiction under section 263 was valid and in accordance with law.

Additional ground 2:

"The learned Pr. Commissioner of Income-tax is not justified in law in invoking provisions of section 263 of the Act based on the audit objections raised by revenue audit party and the same is bad in law and consequently the entire proceeding under section 263 of the Act deserves to be quashed on the facts and circumstances of the case."

The contention that the 263 proceedings were initiated merely on the basis of an audit objection is factually incorrect. It is settled law that an audit objection may bring certain issues to the notice of the Commissioner. However, the exercise of powers under section 263 is valid where the Commissioner independently examines the assessment records and forms his own satisfaction that the assessment order is erroneous and prejudicial to the interests of Revenue.
In the present case, the 263 order contains a detailed examination of the Joint Development Agreement dated 28.03.2011, the Agreement of Sale Without Possession dated 27.05.2019, the treatment of the land in the books of account, the commercial exploitation of the property.
The 263 order is therefore made on the Principal Commissioner's independent application of mind to the material available on record and not on any audit objection. The assessee has not produced any material to establish that the Principal Commissioner acted under the dictates of the audit party or surrendered his independent judgment. In the absence of such evidence, the allegation that the proceedings were initiated solely on the basis of an audit objection is without merit and liable to be rejected.

3. Admissibility of Rule 29 of the Income Tax Appellate Tribunal Rules, 1963:
Admissibility of additional evidence in the instant case has been examined as per Rule 29 of the Income Tax Appellate Tribunal Rules, 1963. The case records have been perused and it is found that in this case none of the above conditions are satisfied. Therefore, it is submitted that the admissibility of additional evidence before the Hon'ble ITAT during the appellate proceedings in the instant case is not applicable.

4. The additional evidence furnished by the assessee has been examined. The same broadly comprises (i) RTI application filed by the assessee, (ii) Copy of letter dated 25.02.2026 issued by ITO (TPS)-1, (iii) Copy of letter dated 12.03.2026 issued by CPIO, (iv) Audited Financial Statements and v) Assessment order.

5. In this regard it is submitted that the assessee has relied upon audited financial statements and ledger extracts to contend that the Bannerghatta land was reflected under Fixed Assets/Capital Work-in-Progress and therefore constituted a capital asset. However, the accounting treatment adopted by the assessee in its books of account is not conclusive for determining the true nature and character of the asset under the Income-tax Act. The taxability of a transaction is required to be determined on the basis of the real nature of the transaction, intention of the assessee, surrounding circumstances and the manner in which the asset was commercially exploited. Merely because the land was reflected under Fixed Assets/Capital Work-in-Progress in the financial statements, it cannot be inferred that the land was held purely as an investment. The audited financial statements only evidence the accounting classification adopted by the assessee and do not override the factual findings arising from the Joint Development Agreement, development activities undertaken, revenue-sharing arrangements and other attendant circumstances indicating commercial exploitation of the land. Accordingly, contentions raised by the assessee cannot be accepted.

6. In view of the above, it is concluded that the additional evidence produced by the assessee does not materially affect the findings or conclusions recorded in the assessment order in respect of any of the grounds, and no change is warranted to the departmental stand already taken.

Regards,

Siva Ranjini S, IRS
ACIT, Circle -1(1)(1),
Bengaluru.

On 08/06/26 03:24 PM, **"DC/ACIT HQ PCIT-1, BANGALORE"** <BANGALORE.DCIT.HQ.PCIT1@incometax.gov.in> wrote:

Sir,

I am directed to forward herewith the trailing mail for kind information and necessary action.

--
Regards,

S.P. Prem Kamal
ACIT (HQ)
O/o PCIT, Bengaluru-1
Bengaluru.

------ Original Message ------
From: **"bangalore.pcit1"** <bangalore.pcit1@incometax.gov.in>
Date: Jun 8, 2026 1:19:45 PM
Subject: Fwd: Assessee's appeal in ITA No. 1194/Bang/2025, ETA Star Infopark, PAN: AACFE6010C- A.Y. 2020-21- reg.
To: Prem Kamel <BANGALORE.DCIT.HQ.PCIT1@incometax.gov.in>

Sir, please find the trailing mail forwarded herewith for necessary action.

----- Original Message -----
From: **"BANGALORE CIT[ITAT]-1, Bangalore"** <bangalore.cit.itat1@incometax.gov.in>
Date: Jun 8, 2026 11:52:47 AM
Subject: Assessee's appeal in ITA No. 1194/Bang/2025 , ETA Star Infopark, PAN AACFE6010C - A.Y. 2020-21 - reg
To: "bangalore pcit1" <bangalore.pcit1@incometax.gov.in>

Madam,

Please refer to above.

2. The above mentioned appeal has been filed by the assessee, ETA Star Infopark against the order u/s 263 passed on 24.03.2025 The assessee has filed additional grounds of appeal (copy enclosed) along with additional evidence (copy enclosed) during the course of appellate proceedings before Hon'ble ITAT, Bangalore.

3. It is requested to examine the additional evidence filed by the assessee and comment on the admissibility of the additional evidence under Rule 29 of the ITAT Rules, 1963, and also on the merits.

4. Further it is also requested to comment on the additional grounds filed by the assessee and the view to be taken by the Department.

5. The case is scheduled for hearing on 15.06.2026 before the Hon'ble ITAT A Bench. Therefore, it is kindly requested that the report may be submitted before the hearing date to enable the undersigned to represent the case effectively on the date of hearing before the Hon'ble ITAT, Bangalore.

Yours faithfully,

(Somanath S Ukkali)
Commissioner of Income Tax(DR),
ITAT-1, Bangalore.

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With regards,
Amrita Ranjan, IRS
Principal Commissioner of Income Tax-1
Bengaluru

Call: 080-2562-5526

--
Regards,

S.P. Prem Kamel
ACIT (HQ)
O/o PCIT, Bengaluru-1
Bengaluru.

9.1 The revenue has further submitted the following submissions counter to the assessee's response dated 7.7.2026 to the revenue's written submissions on behalf of the assessee's appeal:

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

In the case of

M/s ETA Star Infopark

IN

ITA No. 1194/BANG/2025

Assessment Year 2020-21

May it please Your Honours

Sub: **Counter to the assessee's response dated 07.07.2026 to the revenue's Written Submissions on behalf of the Assessee's Appeal in the case of M/s ETA Star Infopark-AY 2020-21), PAN AACFE6010C** - reg.

Kindly refer to the above.

This Counter is filed on behalf of the Revenue in reply to the Assessee's "*Appellant's Response to Written Submissions dated 25.06.2026*", filed on 07.07.2026 (hereinafter, "**the Rejoinder**"). The Rejoinder replies, point by point, to the Revenue's Written Submissions dated 25.06.2026 ("**Revenue WS**"). This Counter may kindly be read with the Revenue WS and with the Revenue's Counter to the Assessee's Additional Written Submissions dated 25.06.2026 ("**the first Counter**"). Both are on record and contain the detailed record citations and authorities. To avoid repetition, the Revenue adopts what is stated there and sets out below only what is needed to answer the Rejoinder.

The following short forms are used: "**AWS-1**" – the Assessee's Written Submissions dated 23.02.2026; "**AWS-2**" – the Assessee's Additional Written Submissions dated 25.06.2026; "**AO**" – the Assessing Officer; "**Pr. CIT**" – the Principal Commissioner of Income-tax-1, Bengaluru.

A. Five facts and propositions that govern this appeal

The Revenue submits that the Rejoinder raises no new point of substance. Every contention in it rests on one premise – that the AO took a plausible view after adequate inquiry. The

record does not bear that premise out. The following five points, already on record, answer the greater part of the Rejoinder.

A.1 The assessment order is silent. The Revenue submits that the assessment order dated 29.09.2022 (Pages 42–47 of the Appeal Memo) contains no finding on Section 2(47), on Clause 13 of the Agreement dated 27.05.2019, on the head of income under which the sum of Rs. 460.69 Crores was assessable, or on the genuineness of the brokerage of Rs. 11.22 Crores. The only addition made is the disallowance of Rs. 72,22,280.

A.2 The only show-cause notice did not touch the issue. The sole show-cause notice of the AO, dated 17.09.2022 (Pages 228–229 of PB-1), was confined to that expense disallowance. The Rejoinder itself says so at its page 7 (the notice was issued "to disallow the said General and Admin expenses"). The Revenue submits that an issue on which no question was put and no finding was recorded cannot be said to have been adjudicated.

A.3 When the directed inquiry was made, the result changed. In the consequential proceedings, the NFAC's notice u/s 142(1) dated 19.01.2026 — filed by the Assessee itself — asked, at query 7, for the rationale for treating the proceeds of development of land as long-term capital gains instead of business income. The fresh assessment order dated 25.03.2026 (Annexure-12) assessed the receipt as business income. The Revenue submits that the finding in the Revision Order that a material issue had gone unexamined was therefore real and not academic, and the prejudice quantified therein (Rs. 71.38 Crores on Issue 1) was real.

A.4 The law. Explanation 2(a) to Section 263 deems erroneous an order passed "without making inquiries or verification which should have been made". The plausible-view doctrine (*Malabar Industrial Co. Ltd. (2000) 243 ITR 83 (SC); Max India Ltd. (2007) 295 ITR 282 (SC)*) protects a view actually taken after examination. It does not apply where no view exists on the record. Merely calling for documents is not inquiry (*Gee Vee Enterprises (1975) 99 ITR 375 (Del.)*). Where the defect is absence of inquiry, setting aside the assessment for a fresh inquiry is the remedy provided by Section 263(1) itself (*Daniel Merchants P. Ltd. (2018) 95 taxmann.com 366 (SC)*).

A.5 This is a case of no inquiry, not of inadequate inquiry. The Rejoinder repeatedly asserts that there was "adequate inquiry" and that the extent of inquiry is the AO's prerogative. The Revenue submits that the distinction matters. Every authority now cited by the Assessee on non-discussion in the assessment order concerns a case where a query was raised on the very issue and was answered. Here, no query was raised on the head of income at all. The queries of 03.08.2022 sought the computation of, and the documents supporting, the long-term capital gain as already offered. None of them asked whether that head was correct. An inquiry that assumes the claim cannot be an inquiry into the claim.

SUBMISSION. The Rejoinder proceeds throughout on the premise that the AO took a view on the head of income. The record shows that no such view was recorded. The Revenue submits that this alone answers the greater part of the Rejoinder. The Parts below add only what is specific to each contention.

B. Reply on jurisdiction (Rejoinder, Points 1 to 6, replying to Part IV-A of the Revenue WS)

B.1 The contention that the AO, on seeing the Agreement, concluded that it was a transfer under Section 2(47)(i) and (ii)

The Assessee contends that the AO, on scrutiny of the Agreement furnished with the reply dated 19.08.2022, 'came to the conclusion' that the instrument was a transfer of a capital asset under Section 2(47)(i) and (ii) read with Explanation-2 and Section 269-UA(2)(f)(ii), and on that basis accepted the gain as long-term capital gain.

The Revenue submits that this conclusion is inferred from silence. The assessment order does not mention Section 2(47), any of its sub-clauses, or Explanation-2. A reasoned application of those provisions cannot be attributed to an order that does not refer to them, and whose only show-cause notice concerned a Rs. 72 lakh expense. The Revenue further submits that the length of the Assessee's own argument tells against it. The Assessee now needs many pages, in AWS-1 (Issue No. 5) and in the Rejoinder, to establish that the Agreement is a transfer, including a distinction between "transfer" under Section 2(47) and transfer under the Transfer of Property Act, 1882. A question that needs so much argument today could not have answered itself in 2022. The AO's silence on it was not a considered decision.

B.2 The contention that documents were called for and examined, and that the extent of inquiry is the AO's prerogative

The Assessee relies on query 7 of the notice dated 03.08.2022 (which called for the computation of the long-term capital gain and a note on the nature of the transaction) and on queries 1, 5, 6 and 8, and submits that the AO accepted the claim after examination and not mechanically.

The Revenue submits that, on the Assessee's own narration, documents were called for on 03.08.2022, documents were filed on 19.08.2022, and the claim as offered was accepted — with no further question on the head of income, no show-cause notice, and no finding. That is a complete absence of inquiry on the characterisation issue, not an inadequate inquiry. The prerogative as to the extent of inquiry applies to the choice among modes of inquiry actually undertaken. Explanation 2(a) is directed at inquiry not undertaken at all. No principle of law protects complete silence on a material issue from revision (*Raj Kumar Goyal (Indore ITAT)*; see also B.4 below).

B.3 The contention that no show-cause notice on the Rs. 460 Crore issue was required, and that the AO followed the consistent position of earlier years

The Assessee submits that a show-cause notice is issued only when the AO finds the head of income offered to be unsustainable; that here the AO found the long-term capital gain sustainable; and that the AO had before him the scrutiny history for AYs 2015-16 to 2018-19 and the Tribunal's order dated 02.09.2022, and therefore had no reason to examine any other head.

The Revenue submits that silence is not a finding of sustainability, and an assumed acceptance is not an examined one. The plea of consistency fails on four independent grounds, already set out in the first Counter: (i) the Tribunal's order dated 02.09.2022 is pending in the Department's appeal before the Hon'ble Karnataka High Court (admitted at para 12(v) of AWS-1) and has not attained finality; the absence of a stay does not make it final; (ii) that order dealt with the periodic revenue share under the JDA for AYs 2015-16 and 2016-17; (iii) the Agreement dated 27.05.2019, its Clause 13 and the Section 2(47) question on that instrument were not before that Bench and have been decided by no forum; and (iv) each assessment year is a separate unit, and res judicata does not apply to income-tax proceedings. The AO cannot be said to have "followed" a ruling on a transaction that no authority had considered.

B.4 The authorities on acceptance inferred from silence

The Rejoinder relies on *V-CON Integrated Solutions* [2025] 173 taxmann.com 774 (SC); *ACIT v. Marico Ltd.* [2021] 133 taxmann.com 122 (SC); *[CIT v. Cognizant Technology Solutions India (2023) 452 ITR 224 (SC); CIT v. Usha International 348 ITR 485 (Del.); CIT v. Vikas Polymers 341 ITR 537 (Del.); CIT v. Reliance Communications (2017) 396 ITR 217 (Bom.); DCW Ltd. v. ACIT [2010] 37 SOT 322 (Mumbai); and CIT v. Sunbeam Auto 332 ITR 167 (Del.)*, for the proposition that the assessee does not control the pen of the AO and that non-rejection of an explanation amounts to acceptance of it. The Revenue submits that these authorities do not assist the Assessee, for four reasons:

(a) Each of those cases turned on a query having been raised on the very issue and answered by the assessee, so that the issue was shown to have been considered by the AO. Here, no query was raised on the head of income. A rule that treats an answered query as a considered view cannot turn an unasked question into a deemed opinion.

(b) *Marico* and *Cognizant* are reopening cases under Sections 147/148, decided on the bar of "change of opinion". The test under Section 263 is different and is governed by Explanation 2(a). An opinion deemed to exist for the purpose of barring reassessment is not the same as an examination sufficient to resist revision.

(c) *Sunbeam Auto* itself draws the distinction on which the Revenue relies – between "lack of inquiry", which permits revision, and "inadequate inquiry", which does not. On the head of income, the present case is one of lack of inquiry. *Usha International*, *Vikas*

Polymers, *Reliance Communications* and *DCW* (Supra) each rested on a finding of fact that the issue had in truth been inquired into. No such finding is possible here.

(d) *V-CON Integrated Solutions*(Supra) supports the Revenue. While it observes that the assessee does not control the AO's pen, it expressly permits a remand where there was a failure to investigate, or where the investigation was superficial and random. That is the Revenue's case, and it is the very limb of *V-CON* relied upon in the first Counter.

B.5 The Tribunal's order dated 02.09.2022

The Revenue submits, for the reasons at B.3 above, that the order dated 02.09.2022 does not conclude the present transaction. It is not final; it concerned the periodic revenue share of earlier years; and the 2019 Agreement, on which this appeal turns, was not before that Bench. That no stay has been granted does not assist the Assessee. A pending appeal leaves the correctness of the order open.

C. Reply on the power to remand (Rejoinder, Point 7, replying to Part IV-B of the Revenue WS)

The Assessee, relying on *ITO v. D.G. Housing Projects Ltd. (2012) 343 ITR 329 (Del.)* and *Pr. CIT v. Brahma Centre Development (2021) 437 ITR 285 (Del.)*, contends that Section 263(1) does not authorise a remand for fresh inquiry, and that the Pr. CIT was bound to conduct his own enquiry and record a finding of error before setting the order aside. The Revenue submits three answers:

(a) *D.G. Housing* distinguishes two situations. Where the alleged defect is a wrong conclusion on the merits, the Commissioner must himself enquire and record the error. But where the facts on record themselves called for further enquiry which the AO did not make, *D.G. Housing* (Supra) permits the Commissioner to record that failure and remit the matter. The Assessee's own extract contains that passage. The present case falls within that second situation.

(b) *Deniel Merchants*(Supra) is directly on point and later in time: where the defect is no inquiry, setting aside the order for a fresh inquiry is the correct course. Explanation 2(a), inserted with effect from 01.06.2015, also deems such an order erroneous by statute. *D.G. Housing* (Supra) predates that provision and must be read subject to it.

(c) The premise that the Pr. CIT recorded no finding of error is incorrect. Para 19 of the Revision Order records, in the words of Explanation 2(a), that the AO failed to examine the issue in the right perspective. Para 5 confines the direction to the treatment of the sale consideration under the Agreement dated 27.05.2019. That is a recorded finding of error followed by a specific direction. It is not a roving inquiry. The Assessee cannot contend both that the Pr. CIT pre-judged the head of income and that he failed to decide it.

As to the submission that the primary intention was to tax the income at a higher rate, the Revenue submits that the difference between 20% and 30% is the very prejudice that Section

263 exists to correct. Recovery of a lawful short levy is the discharge of a statutory duty and does not vitiate the exercise of the power.

D. Reply on natural justice (Rejoinder, Point 8, replying to Part IV-C of the Revenue WS)

The Assessee contends that the business-income issue was a new, third issue outside the Notice u/s 263, which referred to Income from Other Sources; that no fresh hearing was given in the 40 days between its objections and the Revision Order; and that, on *Pr. CIT v. Universal Music India (P.) Ltd. [2023] 155 taxmann.com 230 (Bom.), Perfect Filaments v PCIT ITA No. 3501/Mum/2025 (Assessment Year 2020-21) and Poovayya & Co.v PCIT [2026] 182 taxmann.com 813 (Bangalore - Trib.)*, the order had to be confined to the reasons in the notice. The Revenue submits:

(a) The premise is not borne out by the record. Paras 4 to 8 of the Notice u/s 263 dated 23.01.2025 required the Assessee to answer on the validity of the transfer and on the taxability of the sale consideration otherwise than as long-term capital gain. Whether the correct alternative head is "Other Sources" or "Business" is a facet of that noticed issue. It is not a new issue. The Assessee's 38-page objections dated 12.02.2025 dealt at length with the character of the land and of the receipt. A party heard fully on the character of a receipt cannot claim surprise at the head indicated for verification.

(b) The law is settled by *CIT v. Amitabh Bachchan (2016) 384 ITR 200 (SC)*, in the very paragraph relied on by the Assessee: Section 263 does not raise the notice to the status of a mandatory show-cause notice, and the Commissioner is not confined to its terms. What natural justice requires is an opportunity of hearing, which was given and used (*Electro House (1971) 82 ITR 824 (SC)*). The statute does not require a second hearing between the filing of objections and the passing of the order. The 40-day interval has no legal consequence in the absence of prejudice, and there is none: para 5 of the Revision Order leaves all questions open, and the Assessee received full opportunity in the fresh proceedings.

(c) The three decisions cited do not advance the Assessee's case. *Universal Music* affirms *Amitabh Bachchan* (Supra) and rested on a finding of fact that the assessee there was never confronted at all with an issue wholly outside the notice. The SLP against it was dismissed on a delay of 411 days and lays down no binding ratio on the merits (*Kunhayammed v. State of Kerala (2000) 245 ITR 360 (SC)*). *Perfect Filaments* and *Poovayya & Co.* (Supra) are decisions of co-ordinate Benches. They cannot prevail over the Hon'ble Supreme Court, and both concerned issues that were neither noticed nor met — the opposite of the present record.

(d) The Assessee reads the Revenue WS as an admission that no hearing was given on the business-income point. The Revenue submits that this reading is incorrect. The submission in the Revenue WS was one of severability, made in the alternative: even if every business-income observation were excluded, the operative direction rests on the

noticed characterisation issue and the order survives. An alternative submission is not a concession. The Revenue's primary position remains that the head of income fell within the noticed issue and was heard. On the Assessee's own reading of that passage, moreover, the Revision Order stands on the noticed ground.

E. Reply on the BHN Foods brokerage of Rs. 11.22 Crores (Rejoinder, Point 9, replying to Part IV-D of the Revenue WS)

The Assessee admits that the Engagement Letter (Pages 3–4 of PB-1) was not furnished to the AO, and explains that the AO did not specifically ask for it. It adds that the Letter was later produced to the Pr. CIT; that the AO allowed the deduction under Section 48(i) after considering the justification furnished; and that the Pr. CIT gave no specific direction to disallow the brokerage.

The Revenue submits that, on this admission, a deduction of Rs. 11.22 Crores was allowed without the basic contract governing the payment ever being before the AO. Production of the document later, before the Pr. CIT, does not cure the AO's non-verification. Nor does the absence of a separate direction to disallow: the Pr. CIT's direction was to frame a fresh assessment after the necessary verification, and that direction covers claims allowed without inquiry. The genuineness of a large payment to a food business, engaged to negotiate with the Assessee's own JDA partner of long standing, was never tested. That no query on brokerage was raised in the fresh proceedings is a matter for that proceeding; it cannot validate the original absence of inquiry.

F. Reply on the "transfer" under Section 2(47) and on de-facto possession (Rejoinder, Points 10 and 13(iii), replying to Part IV-E of the Revenue WS)

The Assessee contends that the Agreement is a completed transfer under Section 2(47)(i) and (ii) read with Explanation-2, because all rights except legal possession were given up against full consideration; that the objections noted by the Pr. CIT — no possession under Clause 13, inadequate stamp duty, the deficit-duty notice, deemed transfer under Section 2(47)(v), and the absence of a sale deed — concern transfer under the general law and not under the Act; and it relies on *Balbir Singh Maini (2017) 398 ITR 531 (SC)* and *Seshasayee Steels (2020) 421 ITR 46 (SC)*. The Rejoinder also puts forward a new theory: that the developer's licence under the JDA became de-facto or constructive possession once full payment was made, only de-jure possession being withheld. The Revenue submits:

(a) Whether a real transfer took place is a substantial question of law (*Balbir Singh Maini*) (Supra). The existence of that question, unexamined by the AO, sustains the revision — whichever way the question may finally be answered. That the Assessee needs sixteen sub-points and a line of authority to establish the transfer today shows that the question could not have answered itself in 2022, when no question was put and no finding was recorded.

(b) The de-facto possession theory does not assist the Assessee. It contradicts Clause 13 of the very instrument, which states that possession has not been transferred — the clause

on which the Assessee itself relies to justify stamp duty of Rs. 20,000. It also rests on licence-possession, which *Seshasayee Steels*(Supra) holds is not possession in part performance under Section 53A of the Transfer of Property Act. The two positions — no possession for stamp duty, beneficial possession for Section 2(47) — cannot both be correct. The AO examined neither.

(c) The Assessee's own stamp-law material raises further questions instead of answering them. Explanation-1 to Article 5(e) of the Karnataka Stamp Act, 1957, annexed by the Assessee, provides that where a Power of Attorney granted by the seller to the purchaser is referred to in the agreement, possession is deemed to have been delivered, attracting duty as on a conveyance. The Assessee admits that two Powers of Attorney were granted and extended in favour of the purchaser. The District Registrar's notice dated 23.12.2022 under Section 46A for recovery of deficit stamp duty is pending before the Hon'ble Karnataka High Court. The adequacy of the instrument is therefore itself in dispute. These matters bore directly on the claimed transfer and required examination by the AO.

(d) Properly read, *Balbir Singh Maini* and *Seshasayee Steels*(Supra) support the Revenue. They establish that "transfer" under Section 2(47) is a real legal test to be applied to the facts, and that licence-possession is not enough. They confirm that the question was live and required examination.

G. Reply on the business-income material (Rejoinder, Points 12.1 to 12.9, replying to Part V of the Revenue WS)

The Revenue submits, at the threshold, that the whole of this Part of the Rejoinder goes to the merits — whether the land was a capital asset or the stock of a trading venture. The Pr. CIT did not decide that question. He remitted it for the inquiry that ought to have been made. The only question before this Hon'ble Tribunal is whether the issue required examination. The covenants recorded at para 17 of the Revision Order and the conduct on record show that it did, and the volume of the Assessee's present explanation confirms it. Without prejudice to that position, the Revenue answers the principal points:

G.1 Partner composition; "the firm never carried on real estate business". The Assessee states that two partners retired in April 2011 and that most of the remaining partners are landholding companies. The Revenue submits that these are contested facts which cannot be resolved on assertion at the appellate stage. They stand against the Partnership Deed, which records that the firm is "engaged in business of real estate development" (para 1, Revision Order); against the firm's own name, "ETA Star Infopark"; against its constitution by seven realty companies; and against its conduct in committing the land to a revenue-sharing JDA within three years of receipt. They also sit uneasily with the Assessee's own claim of a business loss under Section 71(2), noted below. These are questions of fact for verification.

G.2 The accounting explanations — Capital WIP, the Rs. 180 Crore deposit, the Schedule-8 classification and the cost-absorption. The Assessee now explains that Capital WIP is a sub-head of Fixed Assets and not inventory; that the Rs. 180 Crore deposit was shown as 'Other Liabilities' and not as an advance from customers; that the description of the JDA receipts as direct or operational income in Schedule-8 arose from an inadvertent classification in its accounting software; and that the year-by-year absorption of the land cost was the auditors' matching of cost against the annual gain. The Revenue submits that each of these is an explanation on the merits, going to the character of the asset. On the Assessee's own authorities — *Kedarnath Jute Mfg. Co. (1971) 82 ITR 363 (SC)* and *Taparia Tools (2015) 372 ITR 605 (SC)* — entries in the books do not determine the character of an asset or of income. That principle also cuts against the Assessee's reliance on its own book classification to foreclose inquiry. The Revenue does not accept these explanations. Whether the deposit was a liability or an advance, whether the Schedule-8 entry was an error, and whether the cost-absorption reflects matching or the consumption of stock, are precisely the contested facts that required verification — verification the AO never undertook.

G.3 The decisions on other assessees. The Assessee relies on *CIT v Bagmane Developers [2017] 88 taxmann.com 486 (Karnataka), Embassy Brindavan Developers v. CIT [2022] 145 taxmann.com 527/[2023] 291 Taxman 188/457 ITR 234 (Karnataka), DCIT v. Mallikere Ramaiah Seetharam [2025] 181 taxmann.com 262 (Bangalore - Trib.), Vinod Narappa Reddy ITA 1852-1855/BANG/2018 and G. Vijayasimha Reddy ITA Nos.374 to 376/Hyd/2023.* The Revenue submits that each of these turned on a finding of fact, on that assessee's own record, of investment conduct or passive land-contribution. None lays down a rule of law that abandoned-project land, or a landowner's revenue share, is always a capital asset regardless of conduct. *Embassy Brindavan*(Supra) was distinguished in the first Counter on four grounds: there was no development activity at all; the transaction was solitary; the expenditure comprised only interest, professional charges and brokerage; and the AO there had applied his mind, making it a case of two possible views — the opposite of a silent order. Its application of *Taparia Tools*(Supra) (book entries not conclusive) is also contrary to the Assessee's own accounting argument. *Mallikere*(Supra) is a quantum decision of a co-ordinate Bench in the case of a different assessee, which turned on that assessee's consistent investment treatment. It cannot conclude a transaction it never considered, cannot prevail over the Hon'ble Supreme Court on the Section 263 question, and did not concern a revision of a non-speaking order under Explanation 2(a). Whether this firm held the land as investment or as stock is the very fact remitted for verification.

G.4 The pricing on net present value. The Assessee explains that the price was fixed on the net present value of its remaining revenue entitlement over the balance term of the JDA, but maintains that this was a sale of a capital asset and not of a business stream. The Revenue submits that this too is a merits contention. On the Assessee's own description, what was monetised in 2019 was the future receivables and the balance

unsold undivided shares, priced on net present value. That description is, at the lowest, consistent with a trading receipt. It made the head of income a live question which the AO was bound to examine.

G.5 **The fresh assessment order dated 25.03.2026.** The Assessee states that the AO in the fresh proceedings merely repeated the Revision Order, did not examine the Section 2(47) and Other Sources questions, and taxed the receipt as business income. The Revenue submits two answers. First, the validity of an order under Section 263 is tested on the record as it stood on its date (24.03.2025). Neither the scope of the queries in the consequential proceeding nor the head finally adopted can validate or invalidate the revision. Secondly, even taken on its own terms, the complaint concedes the Revenue's point: after the directed inquiry, the AO examined the material and assessed the receipt as business income. Any grievance against the fresh order is to be pursued in the appeal against that order. On either view, the silence of the original order on the head of income stands established.

H. Reply on the audit objection and on the Section 263 authorities (Rejoinder, Point 11 and its reply to paras 3.2-3.4 of the Revenue WS)

(a) **Audit objection.** The Revenue submits that the origin of the information is not a ground of invalidity. An audit objection forms part of the "record" under Explanation 1(b) to Section 263 and is valid material on which the Pr. CIT may act (*P.V.S. Beedies (1999) 237 ITR 13 (SC); Kirti Anand (2025) 170 taxmann.com 585 (P&H)*). What the law requires is independent satisfaction on examination of the record. That satisfaction appears on the face of the Revision Order: a clause-wise analysis of the JDA and the Agreement (para 17), quantification of the short levy on both issues, and partial acceptance of the Assessee's submissions on brokerage (para 14). An authority that partly decides in favour of the taxpayer has not mechanically adopted an audit note. The Assessee's invitation to the Revenue to produce the objections is beside the point: the Revision Order does not rest on them, and no adverse inference of the kind in *Rai Singh Deb Singh Bist 1974 AIR 478 (SC)* arises from the non-production of a document that is not relied upon.

(b) **Baljinder Singh.** The Assessee seeks to distinguish *Baljinder Singh ITA No. 167 /Chd/ 2023* on its facts (interest on enhanced compensation; binding jurisdictional decisions not followed). The Revenue submits that its ratio supports the Revenue: a non-speaking order on a crucial issue involving substantial tax is not a "possible view", and merely calling for information and placing it on record is not an enquiry.

(c) **The Revenue's authorities.** The Assessee seeks to confine *Malabar, Gee Vee Enterprises, Denel Merchants, Sivarup Vegetable, Rampyari Devi Saraogi, Tara Devi Aggarwal* and *Pavitle Projects* (Supra)each to its facts. The Revenue submits that this ignores their common ratio: a claim accepted without inquiry is both erroneous and prejudicial; the AO is an investigator and not only an adjudicator; and where the facts call for an inquiry the AO has not made, revision and a fresh assessment are proper. *Malabar*(Supra), which the

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Assessee claims for itself, in fact holds that an order accepting a claim without inquiry satisfies both conditions of Section 263. *Gee Vee Enterprises*(Supra)is squarely against the Assessee.

I. The authorities relied on in the Rejoinder — summary of the Revenue's response

For convenience, the Revenue's response to the authorities newly pressed in the Rejoinder is set out in the table below.

Authority relied upon in the Rejoinder	**The Revenue's response**
V-CON Integrated Solutions (SC) (Supra)	Supports the Revenue. It permits a remand where there was a failure to investigate or a superficial and random inquiry. The "pen of the AO" observation presupposes an investigation actually made.
Marico Ltd. (SC); Cognizant Technology Solutions (SC) (Supra)	Reopening cases on "change of opinion" under Sections 147/148. The test under Section 263, governed by Explanation 2(a), is different. A deemed opinion barring reassessment is not an examination resisting revision.
Sunbeam Auto (Del.); Usha International (Del.); Vikas Polymers (Del.); Reliance Communications (Bom.); DCW Ltd. (Bom.) (Supra)	Each rests on a finding that the issue was in fact inquired into, and each applies the distinction between lack of inquiry and inadequate inquiry. On the head of income, the present case is one of lack of inquiry.
D.G. Housing Projects (Del.); Brahma Centre Development (Del.) (Supra)	D.G. Housing itself permits a remit where the facts called for further enquiry which the AO did not make. Deniel Merchants (SC) is later and directly on point. Explanation 2(a) (w.e.f. 01.06.2015) post-dates and governs. The Pr. CIT recorded the error at para 19.
Embassy Brindavan Developers (Kar. HC); SLP dismissed (2024) 169 taxmann.com 137 (SC)	A case of two possible views in which the AO had applied his mind; no development activity; a solitary transaction; expenditure of interest, professional charges and brokerage only. Distinguished in the first Counter. Its application of Taparia Tools is contrary to the Assessee's accounting argument.
Bagmane Developers (Kar. HC) (Supra)	A finding of investment intent on that assessee's own record. It lays down no rule that land acquired for an IT-park is always a capital asset. Whether this firm held the land for investment or for trade is the fact remitted for verification.

Authority relied upon in the Rejoinder	The Revenue's response
Mutukore Ramaiah Seetharam (Bang. ITAT, 28.11.2025) (Supra)	A quantum decision of a co-ordinate Bench in the case of a different assessee, turning on that assessee's consistent investment treatment. It cannot conclude a transaction it never considered, cannot prevail over the Hon'ble Supreme Court on Section 263, and did not concern a non-speaking order under Explanation 2(a).
Vinod Nanappa Reddy (Bang. ITAT); G. Vijaysimha Reddy (Hyd. ITAT) (Supra)	Decisions on the merits of whether a revenue share is capital gains, each on its own facts of passive investment. They do not answer the Section 263 question and go to a matter reserved for the fresh assessment.
Sarjo / Saroj Aggarwal (1985) 23 Taxman 76 (SC)	A caution against a hyper-technical reading of taxing provisions. Substance over form here tells against the Assessee: full price received, possession withheld, and token stamp duty paid.
Baljinder Singh (Chandigarh ITAT) (Supra)	Its ratio supports the Revenue: a non-speaking order on a crucial issue is not a "possible view", and calling for information is not an enquiry.

J. Conclusion

The Revenue respectfully submits that the Rejoinder, despite the further authorities cited, advances the same two contentions as before: that the AO took a plausible view, and that the Assessee was not heard. The first is contradicted by the assessment order itself, which records no view on the head of income. The second is contradicted by the Notice u/s 263 and by the Assessee's own 58-page reply to it. The authorities on acceptance inferred from silence all presuppose a query on the very issue, and no such query was raised here. The authorities on remand permit the very course the Pr. CIT adopted. The business-income material goes to the merits, which the Pr. CIT, without deciding, remitted for the inquiry that ought to have been made in 2022 — an inquiry which, when made in 2026, resulted in the assessment of the receipt as business income. The Revenue therefore submits that the appeal deserves to be dismissed.

PRAYER

In view of the above, the Revenue respectfully prays that this Hon'ble Tribunal may be pleased to:

(a) dismiss the appeal, the Revised Grounds and the Additional Grounds;

(b) uphold the Order under Section 263 dated 24.03.2025 passed by the Pr. CIT-1, Bengaluru, in its entirety;

(c) decline to admit, or give no weight to, the Additional Evidence, which could and ought to have been produced below, the requirements of Rule 29 of the ITAT Rules, 1963 not being satisfied; and

(d) pass such further and other orders as the interests of Revenue and of justice may require.

Respectfully submitted,

Yours faithfully,

(Somanath S Ukkali.)
Commissioner of Income Tax (DR),
ITAT-1, Bangalore.

Bangalore: 08.07.2026
Copy to: The Ld.AR

9.2 The revenue has further submitted the following written submissions to counter the assessee's additional written submissions dated 25.6.2026 on behalf of the assessee's appeal:

BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, BANGALORE

In the case of

M/s ETA Star Infopark

IN

ITA No. 1194/BANG/2025

Assessment Year 2020-21

May it please Your Honours

Sub: Counter to the assessee's additional written submissions dated 25.06.2026 on behalf of the Assessee's Appeal in the case of M/s ETA Star Infopark- AY 2020-21), PAN AACFE6010C - reg.

Kindly refer to the above.

This Counter is filed on behalf of the Revenue in reply to the Assessee's Additional Written Submissions dated 25.06.2026 ("**Addl. Subs.**"). It may kindly be read with the Revenue's Written Submissions already on record ("**Revenue WS**"), which contain the detailed record citations and authorities. To avoid repetition, the propositions in Part A are stated once and are adopted in each of the answers that follow.

A. Three facts on record and one proposition of law

A.1 The assessment order is silent. The Revenue submits that the assessment order dated 29.09.2022 (Pages 42–47 of the Appeal Memo) contains no finding on Section 2(47), on Clause 13 of the Agreement dated 27.05.2019, on the head of income under which the sum of Rs. 460.69 Crores was assessable, or on the genuineness of

the brokerage of Rs. 11.22 Crores. The only addition made in the order is the disallowance of Rs. 72,22,280.

A.2 The only show-cause notice did not touch the issue. The sole show-cause notice issued by the AO, dated 17.09.2022 (Pages 228-229 of PB-1), was confined to the said expense disallowance. The Assessee itself so states at page 12 of the Addl. Subs. (*"he has issued a show cause notice dated 17-09-2022 to the assessee to disallow the said General and Admin expenses"*). It is respectfully submitted that an issue on which no question was put and no finding was recorded cannot be said to have been adjudicated.

A.3 When the directed inquiry was made, the result changed. In the consequential proceedings, the NFAC's notice u/s 142(1) dated 19.01.2026 – enclosed by the Assessee itself – sought, at query 7, the *"rationale for treating incomes by way of proceeds out of development of land as long term capital gains instead of business income"*, and the fresh assessment order dated 25.03.2026 (Annexure-12) assessed the receipt as business income. The finding in the Revision Order that a material issue had gone unexamined was therefore neither hypothetical nor academic, and the prejudice quantified therein (Rs. 71.38 Crores on Issue 1) was real.

A.4 The proposition of law. Explanation 2(a) to Section 263 deems erroneous an order passed *"without making inquiries or verification which should have been made"*. The "plausible view" doctrine (*Malabar Industrial Co. Ltd. (2000) 243 ITR 83 (SC); Max India Ltd. (2007) 295 ITR 282 (SC)*) protects a considered view actually taken after examination; it has no application where no view exists on the record. A non-speaking order on a material issue does not attract that protection *Baljinder Singh ITA No. 167/Chd/2023*; the mere calling for documents does not amount to inquiry (*ibid.; Gee Vee Enterprises (1975) 99 ITR 375 (Del.)*); and where the defect is an absence of inquiry, the setting aside of the assessment with a direction for fresh inquiry is the remedy provided by Section 263(1) itself (*Deniel Merchants P. Ltd. (2018) 95 taxmann.com 366 (SC)*).

Each contention in the Addl. Subs. proceeds on the premise that the AO took a view. The record shows that no view was recorded. The Revenue submits that this alone answers Points 1 and 3 to 7 of the Addl. Subs.; the paragraphs below add only what is specific to each point.

B. Reply to Points 1 to 7 of the Addl. Subs.

Point 1 – "Plausible view", adequacy of inquiry, "fishing and roving", and consistency

Contention: *queries 5-8 of the notice u/s 142(1) show detailed inquiry; the AO verified the response dated 19.08.2022 and took a plausible view; the extent of inquiry is the AO's prerogative; the direction is a fishing and roving inquiry because no specific head was indicated; and the AO followed the ITAT order dated 02.09.2022 and the consistent stand for AYs 2015-16 to 2018-19.*

(a) On the Assessee's own narration, the sequence of events was: documents were called for on 03.08.2022; documents were filed on 19.08.2022; and the claim was accepted – with no intervening question, no show-cause notice and no finding (paras A.1-A.2 above). The Revenue submits that this is a case of complete absence of inquiry, and not of inadequate inquiry. The distinction is material: as held in *Raj Kumar Goyal ITA No. 438/Ind/2019*, the possible-view decisions *"are applicable only in a situation where the AO has conducted an inquiry… whereas… there is a complete lack of inquiry"*.

(b) The submission that the extent of inquiry is the AO's prerogative does not assist the Assessee. That prerogative operates in choosing among modes of inquiry actually undertaken; Explanation 2(a) is directed at inquiry not undertaken at all. There is no principle of law under which complete silence on a material issue is protected from revision.

(c) The direction is specific and not roving: it is confined to one transaction, one instrument and one question – the treatment of the sale consideration under the Agreement dated 27.05.2019 (para 5, Conclusion and Directions, Revision Order). The Revenue further submits that the Pr. CIT's decision not to pronounce a final head of income is proper in law: he directed verification without substituting his own conclusion, which is precisely the course preserved by limb (iii) of *V-CON*

Integrated Solutions [2025] 173 taxmann.com 774 *(SC)* – relied upon by the Assessee itself – and sanctioned by *Deniel Merchants P. Ltd. (2018) 95 taxmann.com 366 (SC).* The Assessee cannot simultaneously contend that the Pr. CIT pre-judged the issue and that he failed to decide it.

(d) The plea of consistency fails on four independent grounds: (i) the ITAT order dated 02.09.2022 is pending in the Department's appeal before the Hon'ble Karnataka High Court (admitted at para 12(v) of the *Assessee's Written Submissions dated 23.02.2026 ("**AWS**")*) and has not attained finality; (ii) that order dealt with the periodic JDA revenue share of AYs 2015-16 and 2016-17; (iii) the Agreement dated 27.05.2019, its Clause 13 and the Section 2(47) question were not before that Bench and have not been adjudicated by any forum; and (iv) each assessment year is a separate unit and the principle of res judicata does not apply to income-tax proceedings. The AO cannot be said to have "followed" a ruling on a transaction that no authority had considered.

Point 2 – Natural justice: the alleged "new issue", the 40-day interval, Universal Music, Perfect Filaments and Poovayya

Contention: *the business-income issue was a new issue outside the Notice u/s 263 (which referred to Income from Other Sources); no further hearing was given in the 40 days before the order; and, per para 11 of Amitabh Bachchan, Universal Music, Perfect Filaments and Poovayya, the order must be confined to the noticed reasons.*

(a) The premise is not borne out by the record. Paras 4 to 8 of the Notice u/s 263 dated 23.01.2025 required the Assessee to answer on the validity of the transfer and on the taxability of the sale consideration otherwise than as LTCG. Whether the correct alternative head is "Income from Other Sources" or "Business" is a facet of that noticed issue and not a new issue. The Assessee answered it: its 58-page objections dated 12.02.2025 dealt at length with the character of the land and of the receipt, and page 7 of the Addl. Subs. itself records that the Assessee made "detailed submissions on merits" of the two issues and on jurisdiction. A party heard fully on the characterisation of a receipt cannot claim to have been taken by surprise by the head indicated for verification.

(b) The law is settled by the Hon'ble Supreme Court. *Amitabh Bachchan (2016) 384 ITR 200 (SC)* – in the very para 11 relied upon by the Assessee – holds that there is nothing in Section 263 *"to raise the said notice to the status of a mandatory show cause notice… or to require the CIT to confine himself to the terms of the notice"*; what natural justice requires is an opportunity of hearing, which was afforded and availed of (*Electro House (1971) 82 ITR 824 (SC)*). The statute does not require a second hearing between the filing of objections and the passing of the order; the 40-day interval is of no legal consequence in the absence of prejudice, and no prejudice arises because para 5 of the Revision Order leaves all questions open and the Assessee received full opportunity in the fresh proceedings (para A.3 above).

(c) The decisions cited do not advance the Assessee's case. on *Pr. CIT v. Universal Music India (P.) Ltd. [2023] 155 taxmann.com 230 (Bom.)* affirms *CIT v. Amitabh Bachchan (2016) 384 ITR 200 (SC)*, and rested on a finding of fact that the assessee there was never confronted with an issue wholly outside the notice; the SLP against it was dismissed on the ground of a delay of 411 days and lays down no binding ratio on the merits (*Kunhayammed v. State of Kerala (2000) 245 ITR 360 (SC)*). *Perfect Filaments v PCIT ITA No. 3501/Mum/2025 (Assessment Year 2020-21) and Poovayya & Co.v PCIT [2026] 182 taxmann.com 813 (Bangalore - Trib.)* are decisions of co-ordinate Benches which cannot prevail over the judgment of the Hon'ble Supreme Court, and both concerned issues that were neither noticed nor met – the converse of the present record. In the alternative and without prejudice, the operative direction rests on the noticed characterisation issue and is severable; the order would survive even if every observation on business income were excluded.

Point 3 – Capital contribution: Section 14 of the Partnership Act, Section 45(3), DLF Universal and Sai Teja

Contention: *upon contribution in 2008 the land became the exclusive property of the firm and lost its previous character; DLF Universal (Special Bench) and Sai Teja Constructions show that Section 45(3) applies even where stock-in-trade is introduced, the transaction being on capital account.*

The Revenue submits that these authorities govern the taxation of the **contributing partner** at the point of introduction in 2008; they do not determine the character of the

asset **in the hands of the firm** at its disposal in 2019. Further, the submission, taken at its highest, supports the Revenue's position: if upon introduction the land lost its previous character, then its character thereafter falls to be judged solely by the firm's own dealings with it – a firm named "Infopark", constituted by seven real-estate companies, whose deed records that it is *"engaged in business of real estate development"* (para 1, Revision Order), which committed the land to a revenue-sharing JDA within three years of receipt and monetised the residue in 2019. Section 14 of the Partnership Act therefore reinforces, and does not displace, the indicia of trade that required examination.

Point 4 – "The JDA is not an adventure in the nature of trade" (taken with Point 6 – the covenants noted in para 17)

Contention: *the JDA dated 28.03.2011 is not an adventure in the nature of trade; the covenants noted in para 17 of the Revision Order do not show active engagement in development; the appellant carried out no development itself; and the ITAT order dated 02.09.2022 (para 7.19) so held.*

Whether the venture constituted an adventure in the nature of trade is a question on the merits, reserved to the fresh assessment. The question before this Hon'ble Tribunal is only whether the issue required examination, and the covenants themselves establish that it did: a guaranteed minimum yield of Rs. 4,800 per sq. ft., a defined share in every commercial stream (unit sales, leases, car parks, club deposits and infrastructure charges), a non-compete obligation, and an obligation to assist in modification of plans (para 17, Revision Order; para 19.9 of the AWS). The Revenue submits that these are the terms of a participant sharing in the profits of a development venture and not of a passive investor, and that, at the lowest, they made the head of income a live issue which the AO was bound to examine. That the firm did not itself carry out construction is not determinative in law: *P.M. Mohammed Meerakhan (1969) 73 ITR 735 (SC)* holds that land disposed of through a development scheme may yield business income although the owner constructs nothing, and *G. Venkataswami Naidu & Co. (1959) 35 ITR 594 (SC)* makes the intention at acquisition the cardinal test. The order dated 02.09.2022 cannot conclude a transaction that was never before that Bench, for the reasons at Point 1(d) above.

Point 5 – "Fixed Asset / Capital WIP in every balance sheet" (taken with Point 10 – the JAO's statement)

Contention: *the balance sheets and audited financial statements show the Binnypet land under Fixed Asset / Capital Work-in-Progress throughout, establishing a capital asset; the JAO has admitted this classification; the additional evidence substantiates it.*

It is settled law that entries in the books of account do not determine the character of an asset or of income for the purposes of the Act – *Kedarnath Jute Mfg. Co. Ltd. (1971) 82 ITR 363 (SC)*. The same principle is affirmed in the Assessee's own line of authority: *Embassy Brindavan Developers v. CIT [2022] 145 taxmann.com 527/[2023] 291 Taxman 188/457 ITR 234 (Karnataka)*, (its Point 11) applies *Taparia Tools (2015) 372 ITR 605 (SC)*, which holds that "*entries in the books of account are not determinative or conclusive*" and that the matter must be examined on the provisions of the Act. The JAO's statement records only the fact of the accounting entry and not its legal effect. The Revenue further submits that the balance sheets do not present the complete position: the land cost was written down year on year against the JDA receipts until it stood at nil in FY 2019-20, while those receipts were presented as direct / operational income in Schedule-8 for FYs 2015-17 (para 17, Revision Order; paras 19.2(v) and 20.5 of the AWS) – a pattern consistent with the consumption of stock-in-trade and inconsistent with a passive investment. The additional evidence, which in any event does not satisfy Rule 29 of the ITAT Rules, 1963 (Revenue WS, para 7.4), records this very pattern.

Point 7 – The business expenditure claimed in the return (para 6 of the Revision Order)

Contention: *the General and Administrative expenses of Rs. 72,22,280 set off u/s 71(2) were incurred only to maintain the firm's legal existence; there was no business; like claims were disallowed in AYs 2015-16 to 2018-19; the observation in para 6 is factually incorrect.*

The Assessee computed the claim in Schedule BP of its return and sought set-off under Section 71(2) in every year, including the year under appeal. The Revenue submits that this constitutes a representation in the return, verified on oath, that a business head of income exists. That AOs disallowed the set-off in earlier years on the "matching" principle shows only that the same unresolved contradiction recurred

from year to year; it does not efface the Assessee's own characterisation. Whether the explanation now offered is acceptable is a matter for the fresh assessment; para 6 of the Revision Order correctly records that the contradiction appeared on the face of the return and was never examined.

C. Reply to the response on the Remand Report (Points 8, 9 and 11)

Point 8 — Assumption of jurisdiction

Contention: *the appellant relies on its response to Point 1.*

The Revenue adopts the Remand Report of the learned JAO: the AO failed to examine whether the receipt was assessable under the head Capital Gains or Business, and both conditions of Section 263 are satisfied. The Assessee's response is a cross-reference to its Point 1, which stands answered above.

Point 9 — Audit objection; adverse inference under Rai Singh Deb Singh Bist

Contention: *the revision proceedings originated in audit objections of the Revenue Audit Party; the JAO admits that objections exist but declines to furnish copies; an adverse inference must therefore be drawn under Union of India v. Rai Singh Deb Singh Bist (1973) 88 ITR 200 (SC).*

(a) The origin of information is not a ground of invalidity. An audit objection forms part of the "record" under Explanation 1(b) to Section 263 and is valid material on which the Pr. CIT may act — *P.V.S. Beedies Pvt. Ltd. (1999) 237 ITR 13 (SC); Kirti Anand [2025] 170 taxmann.com 585 (P&H).* What the law requires is independent satisfaction upon examination of the record, which is apparent on the face of the Revision Order: a clause-wise analysis of the JDA and the Agreement (para 17), quantification of the short levy on both issues, and partial acceptance of the Assessee's submissions on brokerage (para 14). An authority that partly decides in favour of the taxpayer cannot be said to have mechanically adopted an audit objection.

(b) The distinction drawn by the Assessee applies with equal force to the present case. At page 15 of the Addl. Subs., the Assessee distinguishes the two decisions cited by the DR on the footing that in those cases *"the learned AO has not made proper inquiries on the facts pointed out in the audit objections"*. That description fits the

present record (Part A above); on the Assessee's own test, the audit ground must fail.

(c) *Rai Singh Deb Singh Bist (Supra)* is distinguishable. The adverse inference in that case arose because the Department relied upon a report which it withheld. Here the Revision Order does not rely upon the audit objection; it rests upon the assessment record, the JDA and the Agreement, all of which are before this Hon'ble Tribunal. The existence of objections has never been denied, and disclosure was declined on the stated ground that audit objections are internal inter-departmental correspondence (JAO's letter dated 18.06.2026). No adverse inference arises from the non-production of a document that is not relied upon.

Point 11 – Embassy Brindavan (Kar. HC; SLP dismissed) and DCIT v. Mathikere Ramaiah Seetharam [2025] 181 taxmann.com 262 (Bangalore - Trib.)

Contention: *in Embassy Brindavan the Hon'ble Karnataka High Court (SLP dismissed on 18.11.2024) held that where two plausible views exist, jurisdiction u/s 263 cannot be exercised, on facts said to be similar; Mathikere holds that entering into a JDA does not convert a capital asset into stock-in-trade.*

Embassy Brindavan(Supra) was a case of two possible views; the present case is one of no view. The distinctions appear from the Assessee's own summary of that judgment: (i) in that case no development activity whatever was undertaken – here there was a revenue-yielding JDA operated over a decade on the covenants noted in para 17; (ii) the transaction there was solitary – here revenue was returned across several years, followed by the monetisation of the residual UDS in 2019; (iii) the expenditure there comprised only interest, professional charges and brokerage – here the Assessee's own additional evidence records development-related expenditure of Rs. 1.22 Crores capitalised to the land; and (iv) the Hon'ble Court there found that the AO had *"noted the facts required… and passed the assessment order"*, that is, had applied his mind, so that no elaborate enquiry was called for – whereas here the order is silent (paras A.1–A.2). It is further submitted that the reliance in that judgment on *Taparia Tools (Supra)* (book entries not conclusive) is contrary to the Assessee's own submission at its Point 5. *Mathikere (Supra)* was a quantum appeal of a different assessee which turned on a

finding of fact of consistent investment conduct; that finding is absent here and is precisely the matter remitted for verification.

D. Reply to Point 12 – the "transfer" under Section 2(47) and the stamp-duty material

The Assessee's submission at Point 12 (sub-points (i) to (xvi)) is that the Agreement dated 27.05.2019 constitutes a completed transfer under Section 2(47)(i), (ii) and (vi) read with Section 269-UA(2)(f)(ii), chargeable only as capital gains. The Revenue submits three answers:

- **The detail of the submission itself supports the Revenue.** If sixteen sub-points, a schedule of State stamp law and a line of Supreme Court authority are required today to establish the transfer, the question could not have answered itself in 2022; yet the AO put no question and recorded no finding upon it. Whether a real transfer occurred is a substantial legal question (*Balbir Singh Maini (2017) 398 ITR 531 (SC)*), and its existence, unexamined, sustains the revision whichever way it may ultimately be answered.
- **The Assessee advances two mutually inconsistent positions.** For the purposes of stamp duty it contends that possession was not delivered – Clause 13 of the instrument states in terms that "*possession… has not been transferred*", and duty of Rs. 20,000 was paid under Article 5(e)(ii). For the purposes of Section 2(47) it contends that the purchaser has held "*physical custody… by way of Licence since April 2011*" and is the "de-facto beneficial owner". Possession as licensee is not possession in part performance – *Seshasayee Steels (2020) 421 ITR 46 (SC)* – and beneficial ownership in fact is inconsistent with Clause 13. The two positions cannot both be correct, and the AO examined neither.
- **The Assessee's own stamp-law annexure raises further questions.** Explanation-1 to Article 5(e) of the Karnataka Stamp Act, 1957 – annexed by the Assessee – provides that where a Power of Attorney granted separately by the seller to the purchaser in respect of the property is referred to in the agreement, possession is deemed to have been delivered, attracting duty as on a conveyance. The Assessee

states at sub-point (ix) that two Powers of Attorney were granted and extended in favour of the purchaser. In addition, the District Registrar's notice dated 23.12.2022 under Section 46A for recovery of deficit stamp duty is pending before the Hon'ble Karnataka High Court, so that the adequacy of the instrument is itself in dispute. Each of these matters bore directly on the validity of the claimed transfer and required examination by the AO.

As to sub-point (xvi), the principle that the heads of income are mutually exclusive operates only after the income is shown to fall under a particular head. The prior question — whether the land was a capital asset at all, Section 2(14) excluding stock-in-trade — remains open; if the land was stock-in-trade, Section 45 is not attracted and the questions under Section 2(47) do not arise. This is why the Pr. CIT properly left both questions to verification. The further submission that the NFAC's notice dated 19.01.2026 raised no query on "Income from Other Sources" is of no assistance: the validity of an order u/s 263 falls to be tested on the record as it stood on the date of that order (24.03.2025), and the scope of queries in the consequential proceeding can neither validate nor invalidate it. In any event, the fresh order dated 25.03.2026, passed after inquiry, assessed the receipt as business income, which confirms that the direction for verification was well founded.

E. The authorities newly cited by the Assessee — summary of the Revenue's response

Authority	Revenue's response
Embassy Brindavan Developers (Kar. HC); SLP dismissed (2024) 169 taxmann.com 137 (SC)	A case of two possible views in which the AO had applied his mind; no development activity; a solitary transaction. Distinguished at Point 11. Its application of Taparia Tools (book entries not conclusive) is contrary to the Assessee's Point 5.
DLF Universal (Special Bench); Sai Teja Constructions (Hyd. ITAT) (Supra)	Govern the taxation of the contributing partner at the introduction in 2008; do not determine the character of the asset in the firm's hands at the disposal in 2019 (Point 3).
Universal Music India (Bom.); SLP dismissed (SC) (Supra)	Affirms Amitabh Bachchan; rested on a finding that the assessee was never confronted with the issue; the SLP was dismissed on a delay of 411 days and lays down no ratio on the merits (Kunhayammed).
Perfect Filaments (Mum. ITAT); Poovayya & Co. (Bang. ITAT) (Supra)	Decisions of co-ordinate Benches which cannot prevail over the Hon'ble Supreme Court; both concerned issues neither noticed nor met, unlike the present record (Point 2).

Authority	Revenue's response
Mathukere Ramaiah Seetharam (Bang. ITAT) (Supra)	A quantum appeal of a different assessee turning on a finding of consistent investment conduct; that finding is absent here and is the matter remitted for verification (Point 11).
Union of India v. Rai Singh Deb Singh Bist (SC) (Supra)	The adverse inference requires reliance on a withheld document; the Revision Order does not rely on the audit objection (Point 9(c)).
Taparia Tools (SC), as applied in Embassy Brindavan(Supra)	Supports the Revenue: entries in the books of account are not determinative of the character of an asset.

F. Conclusion and Prayer

The Revenue respectfully submits that the Addl. Subs. put forth, in substance, one jurisdictional contention – that the AO took a plausible view – and one procedural contention – that the Assessee was not heard. The first is contradicted by the assessment order itself, which records no view; the second is contradicted by the Notice u/s 263 and by the Assessee's own 58-page reply to it. The remaining submissions relate to the merits, which the Pr. CIT, without deciding, remitted for the inquiry that ought to have been conducted in 2022 and which, when conducted in 2026, resulted in the assessment of the receipt as business income. The appeal, it is respectfully submitted, deserves to be dismissed.

PRAYER

The Revenue respectfully prays that this Hon'ble Tribunal may be pleased to:

(a) dismiss the appeal, the Revised Grounds and the Additional Grounds;

(b) uphold the Order u/s 263 dated 24.03.2025 in its entirety;

(c) reject the application for admission of Additional Evidence under Rule 29 of the ITAT Rules, 1963; and

(d) pass such further and other orders as may be deemed fit in the interests of justice

Yours faithfully,

(Somanath S Ukkali.)
Commissioner of Income Tax (DR),
ITAT-1, Bangalore.

Bangalore: 08.07.2026
Copy to: The Ld.AR

10. We have heard the rival submissions and perused the material available on record. We are of the considered opinion that in an appeal against an assessment order, the Tribunal exercises regular appellate jurisdiction over the assessment, examining the correctness of additions, disallowances, and other determinations made by the AO on facts and Law, however, for an appeal against a revision order u/s 263 of the Act, the Tribunal is essentially confine itself to examine (1) Whether the very assumption of 263 jurisdiction is valid (2) whether the PCIT's conclusion on "erroneous and prejudicial" are sustainable in law and (3) Whether due process (opportunity of hearing, inquiry) was followed or not. While doing so equal importance must also be given to the AO's recorded enquiries and reasoning, the PCIT's satisfaction & reasons keeping in mind that section 263 of the Act is a revision, not the Appellate power. Further, when the PCIT has chosen to set aside the order of the AO, the Tribunal is not entitled to go beyond and sustain the Order of PCIT **on grounds different from that relied by the ld. PCIT**.

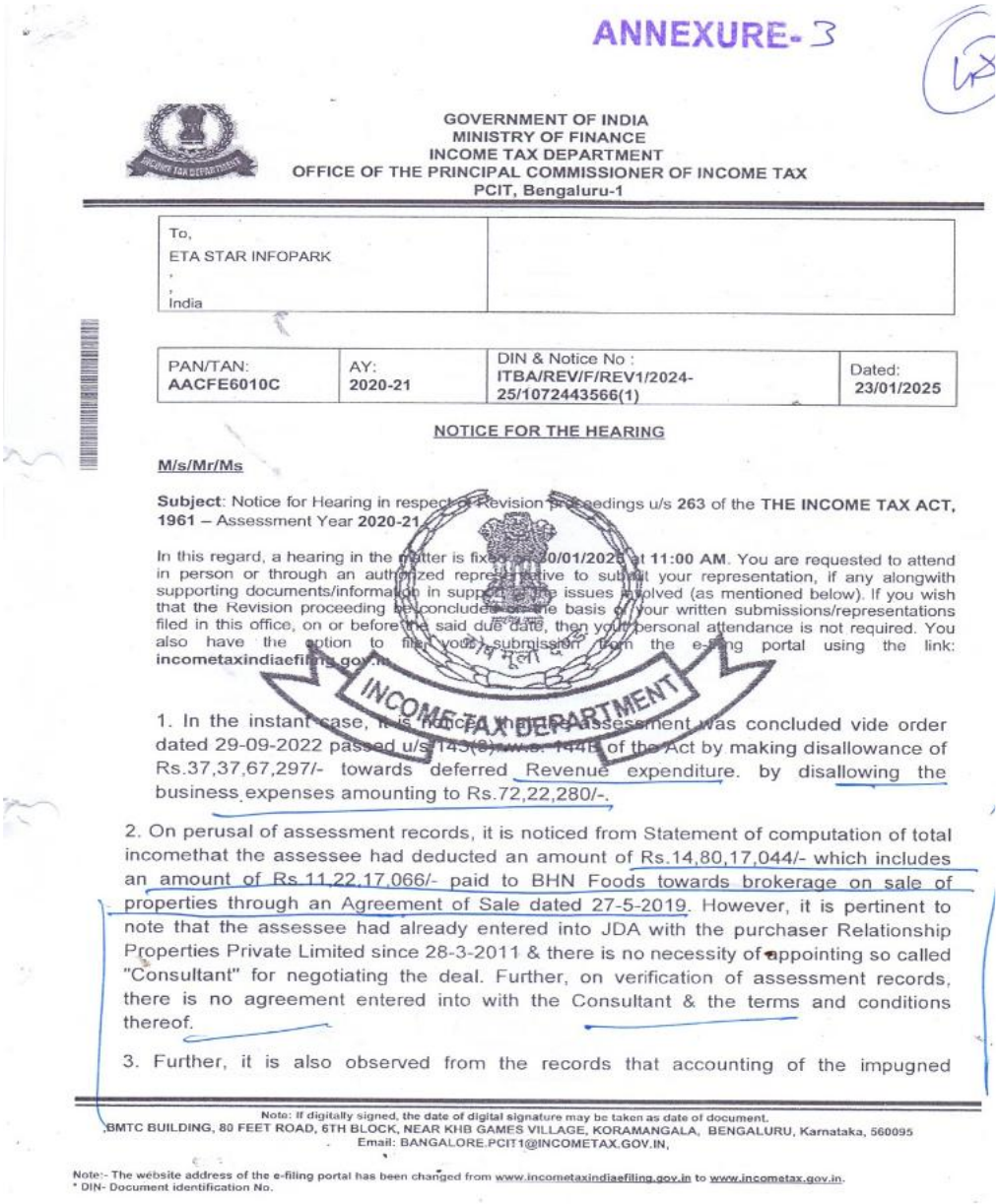
10.1 The division Bench of the Hon'ble High Court of Kerala in the case of **Commissioner of Income Tax v. Chandrika Educational Trust** reported in (1994) 207 ITR 108 had held as under:-

> *"In entertaining an appeal from the Commissioner's order what the Tribunal does is to examine whether the said order is sustainable in law and whether it is within the powers conferred by section 263. Therefore, when the Commissioner has chosen to set aside the order of the Income-tax Officer only on a particular ground, the Tribunal is not entitled to go beyond and sustain the order of the Commissioner on grounds different from that relied on by the Commissioner himself."*

10.2 The Hon'ble High Court of Kerala at Ernakulam in the case of **Save a Family Plan (India) v. The Deputy Commissioner of**

Income Tax (Exemptions) in ITA No.81 of 2025 dated 05/11/2025 had again reiterated the same.

10.3 In view of the above, it is pertinent here to first go through the show cause notice for hearing dated 13/03/2024 issued by the ld. PCIT stating the reasons for invoking the Revision Proceedings u/s 263 of the Act which are reproduced below for ease of reference & convenience-



ANNEXURE- 3

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX
PCIT, Bengaluru-1

To, ETA STAR INFOPARK , , India	

PAN/TAN: **AACFE6010C**	AY: **2020-21**	DIN & Notice No : **ITBA/REV/F/REV1/2024-25/1072443566(1)**	Dated: **23/01/2025**

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s **263** of the **THE INCOME TAX ACT, 1961** – Assessment Year **2020-21**.

In this regard, a hearing in the matter is fixed on **30/01/2025** at **11:00 AM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: **incometaxindiaefiling.gov.in**

1. In the instant case, it is noticed that the assessment was concluded vide order dated 29-09-2022 passed u/s 143(3) r.w.s. 144B of the Act by making disallowance of Rs.37,37,67,297/- towards deferred Revenue expenditure. by disallowing the business expenses amounting to Rs.72,22,280/-.

2. On perusal of assessment records, it is noticed from Statement of computation of total incomethat the assessee had deducted an amount of Rs.14,80,17,044/- which includes an amount of Rs.11,22,17,066/- paid to BHN Foods towards brokerage on sale of properties through an Agreement of Sale dated 27-5-2019. However, it is pertinent to note that the assessee had already entered into JDA with the purchaser Relationship Properties Private Limited since 28-3-2011 & there is no necessity of appointing so called "Consultant" for negotiating the deal. Further, on verification of assessment records, there is no agreement entered into with the Consultant & the terms and conditions thereof.

3. Further, it is also observed from the records that accounting of the impugned

Note: If digitally signed, the date of digital signature may be taken as date of document.
BMTC BUILDING, 80 FEET ROAD, 6TH BLOCK, NEAR KHB GAMES VILLAGE, KORAMANGALA, BENGALURU, Karnataka, 560095
Email: BANGALORE.PCIT1@INCOMETAX.GOV.IN,

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.
* DIN- Document identification No.

expenditure is through journal entry & no bank payment details are available on record. Accordingly, allowing the brokerage paid as expenditure without verification of same is erroneous and prejudicial to interest of Revenue and the same needs to be disallowed.

4. Further, as per the computation filed by the assessee, it is noticed that assessee declared long term capital gain on sale of undivided share in land under Parkwest Joint Development amounting Rs. 460,69,43,333/- out of total consideration of Rs. 475,49,60,377/- after deducting Rs. 14,80,17,044/-. Further, as per "Agreement of Sale Without Possession", available on record, assessee had paid Stamp Duty of Rs. 20,000/- and the consideration/ total sale price payable for the property agreed to be sold was Rs. 560,02,86,000/-(assessee was Seller-1 having its share of Rs. 460,69,43,333/-).

5. As per the Article 5(h) of the Karnataka Stamp Act, 1957, Joint Development Agreements (JDA) for a property are to be levied with Stamp Duty at two per cent on the market value of the share of the developer in the land transferred for development or the market value of the developed property transferred to the owner. Further, a contract for sale is merely an Agreement to Sell. There is no transfer of ownership. The sale creates certain rights and interests for the parties over the property. Ownership refers to a bundle of rights such as possession, interest, title, authority to dispose of, etc.

6. In present facts of the case, the "agreement of sale without possession", is an agreement executed between parties, as owner of land and purchaser of land, for sell of land without giving possession to the buyer/purchaser. Land is remaining in possession of seller, he is not giving custody of land his customer. Hence, "Agreement of sale without possession" is merely a contract to sell without transfer of ownership. As per Income Tax Act, for the purpose of Capital Gain to arise two factors should be there, one there should be a capital asset and another there should be a transfer of capital asset. This condition is not satisfied in present facts of the case.

7. It is further noticed that as per Clause 13 of the "Agreement of sale without possession." :

"The possession of the Property hereby agreed to be sold has not been transferred by the sellers to the purchaser on execution of this Agreement. Further, this is supported by the amount of Stamp duty paid as per Article 5(f) of the Karnataka Stamp Act, 1957, Joint Development Agreements (JDA) for a property are to be levied Stamp Duty at two per cent on the market value but assessee has paid mere Rs. 20000 and also by the form of agreement it is "Agreement of sale without possession."

8. Thus, the gain amounting Rs. 460,69,43,333/- is not a capital gain, as there is no transfer of property but it is income from Other Sources. Therefore, allowing the

AACFE6010C- ETA STAR INFOPARK
A.Y. 2020-21
ITBA/REV/F/REV1/2024-25/1072443566(1)

same as Capital Gain is not in order. Hence, the same should have been taxed at 30%(Normal rate) instead of at 20%(Special rate).

9. In view of above facts of the case, it is evident that the impugned order dated 28-09-2022 is deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue in view of clause(a) to Explanation 2 of section 263 of the I T Act. Accordingly, the order passed **u/s. 143(3) of the Income Tax Act dated 28-09-2022 for AY 2020-21** is proposed to be reviewed u/s 263 of the Income Tax Act 1961.

10. You are requested to furnish your written explanation/submission on or before 30-01-2025 at 11:00 a.m. It may also kindly be noted that personal attendance is not mandatory. If you wish, you may attend in person or through your authorized representative on said date at 11:00 am.

ANURAG SAHAY
PCIT, Bengaluru-1

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

TRUE COPY

For ETA STAR INFOPARK

MANAGING PARTNER

This document is digitally signed.
Signer: ANURAG S
Date: 23 January 2
Location: KARNAT GOA, India

10.4 On going through the above show cause notice for hearing in respect of revision proceedings u/s. 263 of the Act, the reasons cited by the ld. PCIT primarily is that the assessee trust had deducted an amount of Rs.14,80,17,044/- which includes an amount of Rs.11,22,17,066/- paid to BHN Foods towards brokerage on sale of properties through an agreement of sale dated 27/05/2019, however the assessee had already entered into JDA with the purchaser Relationship Properties Private Limited since 28/03/2011 & there is no necessity of appointing so called "Consultant" for negotiating the deal. On verification of the assessment records, there is no agreement entered into with the consultant & the terms and conditions thereof. The Accounting of the impugned expenditure is through journal entry & no bank payment details are available on record. Accordingly, allowing the brokerage paid as expenditure without verification of same is erroneous and prejudicial to interest of Revenue and the same needs to be disallowed.

Further, the "agreement of sale without possession" is an agreement executed between parties, an owner of the land & purchaser of land, for sell of land without giving possession to the buyer/purchaser. Land is remaining in possession of seller, he is not giving custody of land to his customer. Hence, "Agreement of sale without possession is merely a contract to sale without transfer of ownership. As per the income tax act, for the purpose of capital gain to arise two factors should be there, (i) there should be a capital asset and (ii) there should be a transfer of capital asset. This condition is not satisfied in the present fact of the case. It is further noticed that as per clause (13) of the agreement of sale was without possession. Thus, the gain amounting to Rs.460,69,43,333/- is not a capital gain as there is no transfer of property but it is income from other sources. Therefore, allowing the same as a capital gain is not in order, hence the same should

have been taxed at 30% (normal rate) instead of 20% (special rate). In view of the above facts of the case, it is evident that impugned order dated 28.09.2022 is deemed to be erroneous in so far as it is prejudicial to the interest of revenue in view of clause (a) to explanation 2 of section 263 of the Act. Accordingly, the order passed u/s 143(3) of the Act was proposed to be reviewed u/s 263 of the Act.

10.5 Now before proceedings further, it is apposite here to mention the relevant provision of Income Tax Act which is reproduced below:-

Revision of orders prejudicial to revenue.

263. (1) The [[Principal Chief Commissioner or Chief Commissioner or Principal Commissioner] or] Commissioner may call for and examine the record of any proceedings under this Act, and if he considers that any order passed therein by the [Assessing] Officer [or the Transfer Pricing Officer, as the case may be,] is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, [including,

(i) an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or

(ii) an order modifying the order under section 92CA; or

(iii) an order cancelling the order under section 92CA and directing a fresh order under the said section].

[[Explanation 1.]- For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,-

(a) An order passed [on or before or after the 1st day of June, 1988] by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,]shall include—

(i)an order of assessment made by the Assistant Commissioner [or Deputy Commissioner] or the Income Tax Officer on the basis of the directions issued by the [Joint] Commissioner under section 144A;

(ii)an order made by the [Joint] Commissioner in exercise of the powers or in the performance of the functions of an Assessing Officer [or the Transfer Pricing Officer, as the case may be,] conferred on, or assigned to, him under the orders or directions issued by the Board or by the [Principal Chief Commissioner or] Chief Commissioner or [Principal Director General or] Director General or]Principal Commissioner or] Commissioner authorized by the Board in this behalf under section 120;

[*(iii)* an order under section 92CA by the Transfer Pricing Officer;]

(b) "record" [shall include and shall be deemed always to have included] all records relating to any preceding under this Act available at the time of examination by the [Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or] Commissioner;

(c) Where any order referred to in this sub-section and passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,]had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the * [Principal Commissioner or]Commissioner under this sub-section shall extend [and shall be deemed always to have extended]to such matters as had not been considered and decided in such appeal.]

[Explanation 2. – For the purposes of this section, it is hereby declared that an order passed by the Assessing Officer [or the Transfer Pricing Officer, as the case may be,] shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal [Chief Commissioner or Chief Commissioner or Principal] Commissioner or Commissioner,-

(a)the order is passed without making inquiries or verification which should have been made;

(b)the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or

*(d)*the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

[*Explanation 3.*—For the purposes of this section, "Transfer Pricing Officer" shall have the same meaning as assigned to in the *Explanation* to section 92CA.]

[(2) No order shall be made under sub-section (1) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.]

(3) Not withstanding anything contained in sub-section (2), an order in revision under this section may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation. -In Computing the period of limitation for the purposes of sub-section (2), the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

10.6 On plain reading of the aforesaid provisions of the Act, it is very apparent that the ld. PCIT may call for and examine the record of any proceeding under the Act and if he considers that any order passed therein by the AO is erroneous in so far as it is prejudicial to the interests of the revenue, the ld. PCIT may after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment. This provision was the subject matter of interpretation by the Apex Court in the case of *Malabar Industrial Co. Ltd. v. CIT* [2000] 243 ITR 83/109 Taxman 66 (SC), where the Supreme Court has held as under:-

"A bare reading of this provision makes it clear that the prerequisite to the exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the Income-Tax Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be

***satisfied of twin conditions**, namely, (i) the order of the Assessing Officer sought to be revised is erroneous; and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent - if the order of the Income Tax Officer is erroneous but is not prejudicial to the Revenue or if it is not erroneous but is prejudicial to the Revenue recourse cannot be had to section 263(1) of the Act.*

The phrase "prejudicial to the interests of the Revenue" is not an expression of art and is not defined in the act. Understood in its ordinary meaning it is of wide import and is not confined to loss of tax"."

"'..The scheme of the Act is to levy and collect tax in accordance with the provisions of the Act and this task is entrusted to the Revenue. If due to an erroneous order of the Income-tax Officer, the Revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the Revenue.

*The phrase "prejudicial to the interest of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the Revenue. For example, when an Income Tax Officer adopted **one of the courses permissible in law and it has resulted in loss of Revenue; or where two views are possible and the Income Tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the Revenue, unless the view taken by the Income Tax Officer is unsustainable in law**. It has been held by this Court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue."*

10.7 In the case of *Dawjee Dadabhoy & Co. v. S.P. Jain [1957]* 31 ITR 872 *(Cal.)* explaining the meaning of the words prejudicial to the interest of the revenue it was held as under:

"The words, "prejudicial to the interests of the revenue", have not been defined, but it must mean that the orders or assessment challenged are such as are not in accordance with law, in consequence whereof the lawful revenue due to the State has not been realised or cannot be realised. It can mean nothing else."

10.8 Thus, we are of the considered opinion that the ld. Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous insofar as it is prejudicial to the interest of the Revenue. Therefore, it is clear that the ld. PCIT cannot exercise the power of revision solely on the ground that the order passed is erroneous. The ld. PCIT gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. Prejudicial to the Revenue means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the Assessing Authority if the lawful revenue to the Government has not been realized or cannot be realized, as the said order is prejudicial to the interest, of the Revenue and also erroneous, the ld. PCIT gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of Assessing Officer sought to be revised is erroneous and (b) it is prejudicial to the interest of the Revenue. If one of them is absent, i.e., if the order of the Income tax officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is *sine qua non* for the Commissioner to exercise his jurisdiction under section 263.

10.9 Further, the term 'erroneous' has not been defined under the Act. The Apex Court in the above case also held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. Further, the phrase 'prejudicial to the interests of the revenue' is not an expression of art and is also not defined in the Act. The various High Courts have treated loss of tax as prejudicial to the interests of the revenue. If due to an erroneous

order of the AO, the revenue is losing tax lawfully payable by a person, it will certainly be prejudicial to the interests of the revenue. The phrase 'prejudicial to the interests of the revenue' has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of the revenue. There must be some grievous error in the Order passed by the AO, which might set a bad trend or pattern for similar assessments, which on abroad reckoning, the Commissioner might think to be prejudicial to the interests of Revenue Administration. Further, what is erroneous and prejudicial to the interest of the revenue is judicially tested by plethora of decisions however, the scope was further extended by introduction of explanation 2 to section 263 which is inserted by the Finance Act, 2015 with effect from 01/06/2015. This explanation empowers the PCIT from 01.06.2015 to invoke the provision of section 263 to the assessment order to be erroneous in so far as it is prejudicial to the interest of the revenue, if, in the opinion of the Principal CIT,-

> *(a) the order is passed without making inquiries or verification which should have been made;*
>
> *(b) the order is passed allowing any relief without inquiring into the claim;*
>
> *(c) the order has not been in accordance with any order, direction or instruction issued by the Board under section 119;or*
>
> *(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person."*

10.10 The Hon'ble High Court of Delhi in the case of **Commissioner of Income-tax-XIII v. Ashish Rajpal** reported in (Del-HC) (2010) 320 ITR 674 had remarkably extracted the parameters and principles laid down by the Courts which govern the exercise of power by the Commissioner under the provisions of section 263 of the Act:-

(i)	The power is supervisory in nature, whereby the Commissioner can call for and examine the assessment records.
(ii)	The Commissioner can revise the assessment order if the twin conditions provided in the Act are fulfilled, that is, that the assessment order is not only erroneous but is also prejudicial to the interest of the revenue. The fulfilment of both the conditions is an essential prerequisite. [See Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC)].
(iii)	An order is erroneous when it is contrary to law or proceeds on an incorrect assumption of facts or is in breach of principles of natural justice or is passed without application of mind, that is, is stereo-typed, inasmuch as, the Assessing Officer, accepts what is stated in the return of the assessee without making any enquiry called for in the circumstances of the case, that is, proceeds with 'undue haste'. [See Gee Vee Enterprises v. Addl. CIT [1975] 99 ITR 375 (Delhi)].
(iv)	The expression "prejudicial to the interest of the revenue" while not to be confused with the loss of tax will certainly include an erroneous order which results in a person not paying tax which is lawfully payable to the revenue. [See Malabar Industrial Co. Ltd.'s case (supra)].
(v)	Every loss of tax to the revenue cannot be treated as being "prejudicial to the interest of the revenue". For example, when the Assessing Officer takes recourse to one of the two courses possible in law or where there are two views possible and the Commissioner does not agree with the view taken by the Assessing Officer which has resulted in a loss. [See CIT v. Max India Ltd. [2007] 295 ITR 282 (SC)].
(vi)	There is no requirement of issuance of a notice before commencing proceedings under section 263 of the Act. What is required is adherence to the principles of natural justice by granting to the assessee an opportunity of being heard before passing an order under section 263. [See Electro House's case (supra)].
(vii)	If the Assessing Officer acts in accordance with law his order cannot be termed as erroneous by the Commissioner, simply because according to him, the order should have been written 'more elaborately'. Recourse cannot be taken to section 263 to substitute the view of the Assessing Officer with that of the Commissioner. [See CITv. Gabriel India Ltd. [1993] 203 ITR 108 (Bom.)].

(viii)	The exercise of statutory power under section 263 of the Act is dependent on existence of objective facts ascertained from prima facie material on record. The evaluation of such material should show that tax which was lawfully exigible was not imposed. [See Gabriel India Ltd.'s case (supra)].

10.11 Now, in the light of the above principles laid down by the Hon'ble Apex Court & Hon'ble Delhi High Court, it is apposite here to first examine whether the AO passed an assessment order without making necessary enquiries or verifying the issues required as per law as alleged by the ld. PCIT in the revision Order. It is apposite here to reproduce the assessment order passed by the AO-

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

1.	PAN	AACFE6010C
2.	Name of the assessee	ETA STAR INFOPARK
3.	Address of the assessee	NO.501,502 NORTH BLOCK FRONT WING V FLOOR, MANIPAL CENTRE DICKENSON ROAD, BENGALURU 560042, Karnataka, India
4.	Assessment Year	2020-21
5.	Status	FIRMS
6.	Residential Status	Resident
7.	Date of filing of Return of Income	07/01/2021
8.	Acknowledgement Number of Return of Income	126215[illegible]070121
9.	Date of processing u/s 143(1)(a) of the Income-tax Act.	26/12/2021
10.	Income Computed under section 143(1) of the Act	[illegible]
11.	Date of service of Notice under section 143(2) of the Income-tax Act	29/06/2021,29/06/2021,29/06/2021,29/06/2021
12.	Date(s) of issue of Notice(s) under section 142(1) of the Income-tax Act	[illegible]/2021,03/08/2022
13.	Order passed under section	143(3) read with section 144B of the Income-tax Act
14.	Returned Income	Rs. 4,69,56,94,700
15.	Date of Order	29/09/2022
16.	DIN	ITBA/AST/S/143(3)/2022-23/1046093888(1)

INCOME TAX DEPARTMENT

ASSESSMENT ORDER

01. The return of income for the assessment year 2020-21 was filed on 07.01.2021declaring therein total income at Rs.4,69,56,94,700/- under head "Capital Gains" & "Income from Other Sources". The case was selected for scrutiny under CASS.

02. A notice under section 143(2) of the Income-tax Act, 1961 was issued on 29.06.2021. The details of opportunities given in the case may be summarized as follows :

Type of notice/communication	Date of notice/communication	Date of compliance given	of response

Note:- The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

143(2)	29.06.2021	14.07.2021	
142(1)	06.12.2021	15.12.2021	16.12.2021
142(1)	03.08.2022	12.08.2022	10.08.2022
			19.08.2022
			14.09.2022
Show Cause notice	16.09.2022	21.09.2022	20.09.2022

03. The assessee is a partnership firm and the income from the sale of assets in the nature of long term capital assets has been declared. The assessee did not earnincome from business activity during the AY 2020-21. However, against this income fromCapital gains and income from other sources, the assessee has claimed business expensesof Rs.72,22,280/-.

04. Further, ongoing through the Schedule BP of the relevant ITR it was observed that the assessee firm has shown and carried forward the business lossamounting to Rs. 72,22,279/- relevant to the financial year under consideration. The determination of business loss of Rs. 72,22,279/- is as per Schedule BP. It was found that the assessee has set off of business expenses against the income under other head during the year under consideration.As such, a Show-Cause Notice was issued to the assessee on 17.09.2022 for compliance on or before 21.09.2022 as to why the business expense of **Rs. 72,22,280/-** should not be disallowed fromcomputation of income and added back to the total income for AY 2020-21.

In response to above show cause notice, the assessee uploaded written reply only on 20.09.2022 and submitted following point wise submission:

1. justification for claiming general & Administrative expenses of Rs. 72,22,280/- incurred during the year as deduction u/s 37(1) of the Income-tax Act, 1961 and then made set off u/s 71(2) of the Act.
2. Expenditure resulted into loss in the Schedule-BP of ITR.
3. Expenditure incurred to keep its legal status alive and to manage its investment activities.

4. Conditions to be fulfilled for claiming an exemption under Sec. 37(1) of the Income-tax Act, 1961 and no income from business is necessary to claim the expenses as deduction.
5. In the absence of business income, loss can be claimed as set off u/s 71(2) of the Act.

Further, the assessee has cited some case laws in support of the assessee claim for allowing General and Establishment Expenses amounting to Rs. 72,22,280/- as deduction u/s 37(1) of the Act and then to set off the loss arising therefrom against incomes declared under other heads during the year under Sec. 71(2) of the Income-tax Act, 1961.

05. **Matching principle** :A fundamental principle in accounting states that only expensesrelatable to ahead of income should be claimed in P&L account as expenses. In theinstant case, there is no matching of the income and the expense claimed by theassessee. The assessee has had no business activity during the relevant year, hence thecases relied upon by the assessee is not acceptable. The claim of the assessee also fallsshort on the matching principle laid out in accounting standards.The case laws quoted by the assessee in support of its claim, is not necessary that the fact and circumstances of those case laws match with the assessee, will be applicable to the assessees case. Thus, the business expenses are not allowable.

06. In this context, the judgment of Hon'ble Madras High Court in case of CIT vs. AbhinithaFoundation Pvt. Ltd.(2017) 83 was relied upon wherein it was held that even if, the claimmade by the assessee company does not form part of the Original return or even theRevised return, it could still be considered, if relevant material/claim was placed on recordby the assessee company during the assessment proceedings. Apart from the claimsmade by the assessee regarding the advances being made towards purchase of the lands,no other relevant material or documentary evidences have been placed on record by theassessee. Hence the claim of the assessee is not allowed.

However, the Income Tax Act,1961 does not empower the Assessing Officer to admit anyclaim made by the assessee other than an Original or a revised return(Supreme Court OfIndia –Goetze (India) Ltd. v. Commissioner of Income-tax (2006)204 CTR SC 182,2006284 ITR 323 SC).Thus the claim made by the assessee is not allowed.

Reliance is also placed upon the Supreme Court judgement in tuticorin Alkali Chemicals& Fertilizers Ltd.[1997]93 Taxman 502 (SC) wherein it was held that

"...the firm could not claim any relief since there is no business activity and there

could notbe any computation of business income or loss incurred by the assessee in the relevantaccounting year. In such a situation, the expenditure incurred by the assessee for thepurpose of its business could not be allowed as deduction, nor could it be adjusted againstany other income under any other head. Similarly, any income from an on-business sourcecould not be set-off against the liability of business activities."

Thus, the assessee's claim of business expenses of Rs. 72,22,280/- is disallowed andadded back under the head income from business or profession.

Disallowance: Rs. 72,22,280/-)

Penalty proceedings under Sec. 270A is initiated for under reporting of income.

07.In view of the above, the total income of the assessee firm for the relevant AY is computed as under:

	Total Income as per ITR	Rs.4,69,56,94,700/-
Add	Disallowance of Expenses (as discussed above)	Rs. 72,22,280/-
	Total Income (Rounded Off u/s 288A)	**Rs. 4,70,29,16,980**

INCOME TAX DEPARTMENT

Assessed income under Sec. 143(3) read with section 144B of the Income-tax Act, 1961 is determined at Rs. **4,70,29,16,980**/- for the AY ;20-21.The demand notice under Sec. 156 of the Income-tax Act, 1961 alongwith computation of tax by CPC with applicable interest under Sec. 234A, 234B and 234C of the Income-tax Act, 1961 are annexed with assessment order

08. The penalty proceedings initiated in the case may be summarised as follows :

Sl.No.	Penalty under Sec.	Particulars of penalty
1.	270A	Under reporting of income

09. The Assessment order in the case under Sec.143 (3) r.w.s.144B of the Income-tax Act,1961 is passed with the approval of competent authority.

AACFE6010C- ETA STAR INFOPARK
A.Y. 2020-21
ITBA/AST/S/143(3)/2022-23/1046093888(1)

Assessment Unit
Income Tax Department

Copy to:

Assessee

Assessment Unit
Income Tax Department

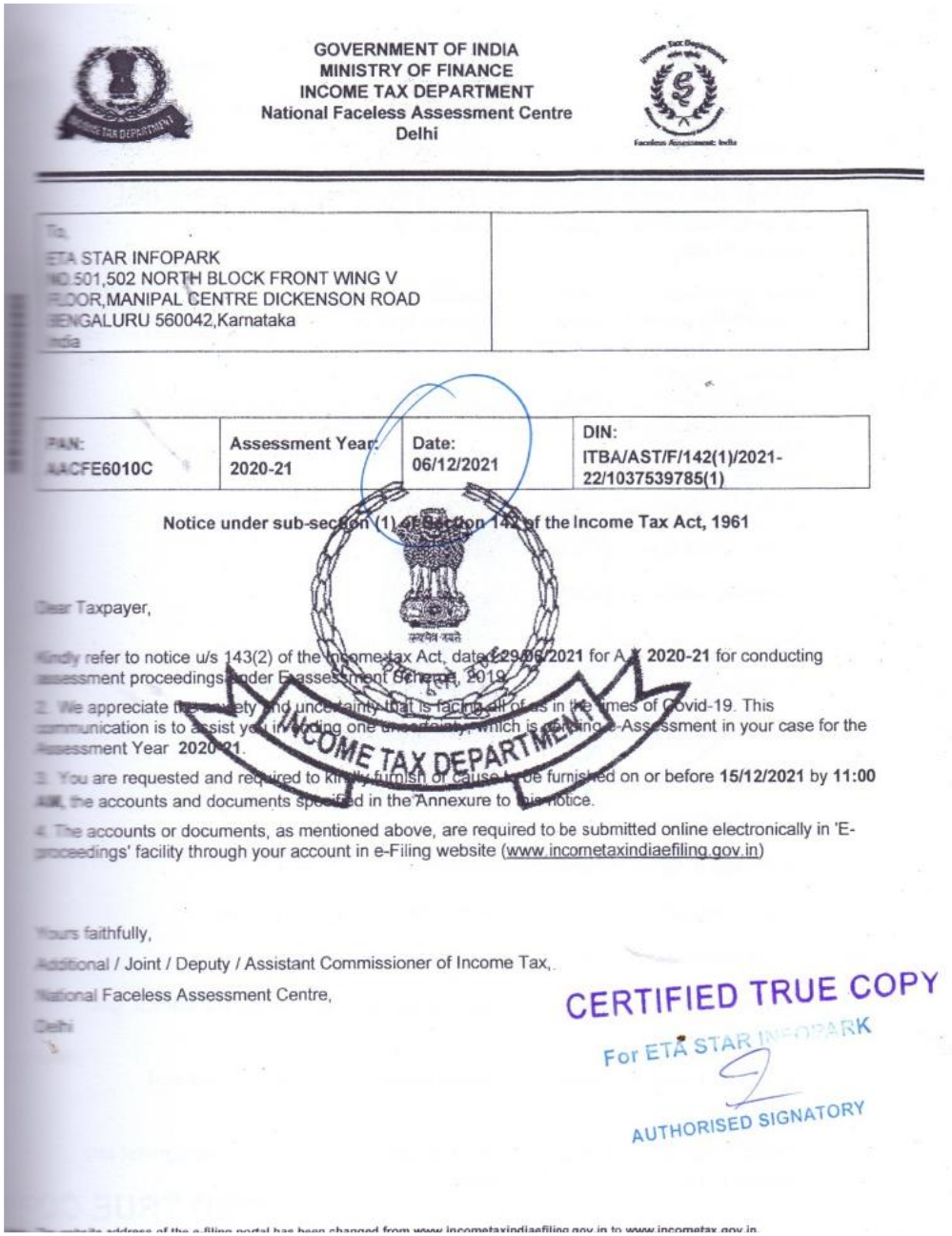


Digitally signed by
ASSESSMENT UNIT, INCOME
TAX DEPARTMENT
Date: 29-09-2022 12:45:49 IST

On going through the above assessment order dated 29.09.2022 passed u/s 143(3) of the Act, we observed that the AO on going through the schedule BP of the relevant ITR, observed that the assessee firm has shown and carried forward the business loss amounting to Rs.72,22,279/- relevant to financial year under consideration. The determination of business loss of Rs.72,22,279/- was as per schedule BP, however, it was found that the assessee has set off the business expenses against the income under other head and accordingly show cause notice was issued to the assessee on 17.09.2022 as to why the business expenses of Rs.72,22,280/- should not be disallowed from computation of income and added back to the total income. The assessee in its reply submitted the justification for claiming general and administrative expenses of Rs.72,22,280/- incurred during the year and claimed as deduction u/s 37(1) of the Act and then made set off u/s 71(2) of the Act. The AO held that the expenditure incurred by the assessee for the purpose of its business could not be allowed as deduction nor could it be adjusted against any other income under any other head. Similarly, any income from an on business source could not be set off against the liability of business activity and accordingly the assessee's claim of business expenses of Rs.72,22,280/- was disallowed and added back to the total income. Thus, after perusal of the assessment order, we are of the opinion that the AO even did not whisper about the issues raised by the ld. PCIT at all while passing the assessment order. Thus, we observed that, neither the issue of allowing deduction towards brokerage on sale of properties amounting to Rs.11,22,17,066/- paid to BHN Fruits nor the issue of taxability of capital gain offered by the assessee was discuss in the order passed by the AO.

10.12 Therefore, now it is very much relevant here for us to go through the notices issued during the course of the assessment

proceedings in order to find out whether the AO had actually made necessary enquiries or verified the issues required as per law as alleged by the ld. PCIT. The notices issued by the AO during the course of assessment proceedings are reproduced below for ease of reference and convenience:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
National Faceless Assessment Centre
Delhi

To,
ETA STAR INFOPARK
NO.501,502 NORTH BLOCK FRONT WING V
FLOOR,MANIPAL CENTRE DICKENSON ROAD
BENGALURU 560042,Karnataka
India

PAN:	Assessment Year:	Date:	DIN:
AACFE6010C	2020-21	06/12/2021	ITBA/AST/F/142(1)/2021-22/1037539785(1)

Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

Dear Taxpayer,

Kindly refer to notice u/s 143(2) of the Income-tax Act, dated 29/09/2021 for A.Y. **2020-21** for conducting assessment proceedings under E-assessment Scheme, 2019.

2. We appreciate the anxiety and uncertainty that is facing all of us in the times of Covid-19. This communication is to assist you in avoiding one uncertainty, which is pending e-Assessment in your case for the Assessment Year **2020-21**.

3. You are requested and required to kindly furnish or cause to be furnished on or before **15/12/2021** by **11:00** AM, the accounts and documents specified in the Annexure to this notice.

4. The accounts or documents, as mentioned above, are required to be submitted online electronically in 'E-proceedings' facility through your account in e-Filing website (www.incometaxindiaefiling.gov.in)

Yours faithfully,

Additional / Joint / Deputy / Assistant Commissioner of Income Tax,
National Faceless Assessment Centre,
Delhi

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For ETA STAR INFOPARK
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The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in

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A.Y. 2020-21
ITBA/AST/F/142(1)/2021-22/1037539785(1)

ANNEXURE

Ref. : Notice under Sec. 143(2) of the Income-tax Act, 1961.

1. No reply in response to notice under Sec. 143(2) of the Income-tax Act, 1961 has been submitted as yet. Please explain.
2. **Exempt income**

1. Break-up of details of different types exempt income.
2. Monthly averages of Opening and closing balance of value of investment income during the year which does not form part of total income.
3. Nature of investment.
4. Details of Investment made during FY : 2019-20 alongwith details of sources of investment thereof
5. Details of borrowing of fund for the above investment and Interest paid on the borrowed fund.
6. Details of expenses iucurred for earning exempt income

(i) Direct expenses (ii) Indirect expenses

3.investment in unlisted equities

i) Details of your investment in unlisted equities during the FY.

a) Name and quantity of the shares held

b) Purchase price per unit and total purchase consideration

c) Date of purchase

d) Mode of acquisition

e) Source of funds for investment

ii) Procedure adopted regarding determining the price of unlisted equity

iii) Details of income earned on the investment during the year.

iv) Details of shares sold during the year along with calculation of capital gain thereon, if any.

4. Names and complete address of sundry creditors alongwith amount and email..

5. Details of set off/adjustment of current year/carried forwarded loss against any income of the year under consideration.

INCOME TAX DEPARTMENT

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A.Y. 2020-21
ITBA/AST/F/142(1)/2021-22/1037539785(1)

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6. Details of diminution in the value of shares to Rs.3,24,71,17,929.

8. Copy of statement of the bank accounts for the FY : 2019-20.

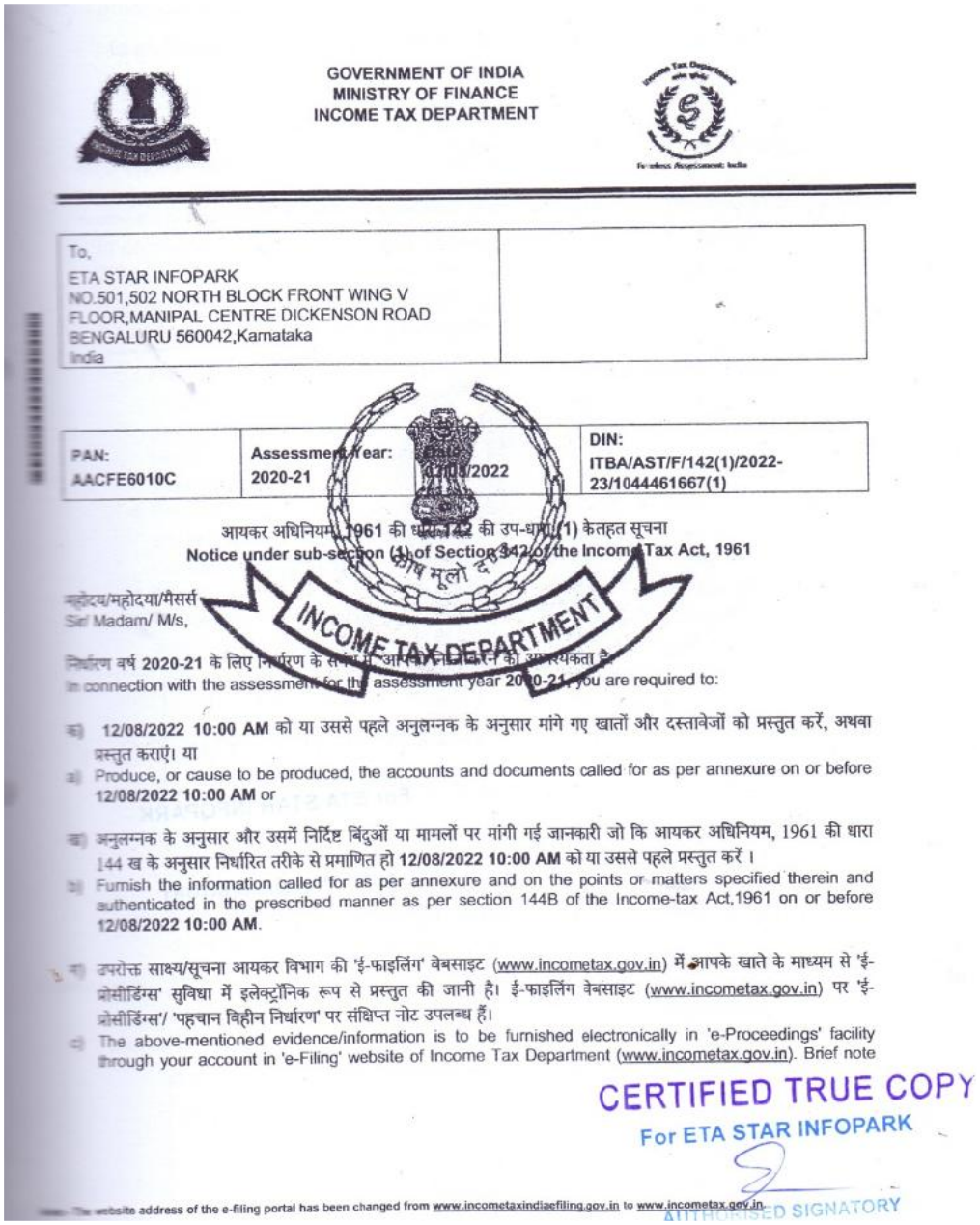
Yours faithfully,
Additional / Joint / Deputy / Assistant Commissioner of Income Tax/
Income-tax Officer,
National Faceless Assessment Centre,
Delhi

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For ETA STAR INFOPARK
AUTHORISED SIGNATORY

सत्यमेव जयते
कोष मूलो दण्ड
INCOME TAX DEPARTMENT

Document certified by Vishesh Prakash
<delhi.dcit2.1.neac@incometax.gov.in>
Digitally signed by Vishesh Prakash
Date: 2021.[illegible] 17:36:52 IST

Page 3 of 3



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT

To,
ETA STAR INFOPARK
NO.501,502 NORTH BLOCK FRONT WING V
FLOOR,MANIPAL CENTRE DICKENSON ROAD
BENGALURU 560042,Karnataka
India

PAN:	Assessment Year:	DIN:
AACFE6010C	2020-21	ITBA/AST/F/142(1)/2022-23/1044461667(1)

आयकर अधिनियम, 1961 की धारा 142 की उप-धारा (1) केतहत सूचना
Notice under sub-section (1) of Section 142 of the Income Tax Act, 1961

महोदय/महोदया/मैसर्स
Sir/ Madam/ M/s,

निर्धारण वर्ष **2020-21** के लिए निर्धारण के संबंध में आपको निम्नलिखित की आवश्यकता है
In connection with the assessment for the assessment year **2020-21**, you are required to:

क) **12/08/2022 10:00 AM** को या उससे पहले अनुलग्नक के अनुसार मांगे गए खातों और दस्तावेजों को प्रस्तुत करें, अथवा प्रस्तुत कराएं। या
a) Produce, or cause to be produced, the accounts and documents called for as per annexure on or before **12/08/2022 10:00 AM** or

ख) अनुलग्नक के अनुसार और उसमें निर्दिष्ट बिंदुओं या मामलों पर मांगी गई जानकारी जो कि आयकर अधिनियम, 1961 की धारा 144 ख के अनुसार निर्धारित तरीके से प्रमाणित हो **12/08/2022 10:00 AM** को या उससे पहले प्रस्तुत करें ।
b) Furnish the information called for as per annexure and on the points or matters specified therein and authenticated in the prescribed manner as per section 144B of the Income-tax Act,1961 on or before **12/08/2022 10:00 AM**.

ग) उपरोक्त साक्ष्य/सूचना आयकर विभाग की 'ई-फाइलिंग' वेबसाइट (www.incometax.gov.in) में आपके खाते के माध्यम से 'ई-प्रोसीडिंग्स' सुविधा में इलेक्ट्रॉनिक रूप से प्रस्तुत की जानी है। ई-फाइलिंग वेबसाइट (www.incometax.gov.in) पर 'ई-प्रोसीडिंग्स'/ 'पहचान विहीन निर्धारण' पर संक्षिप्त नोट उपलब्ध हैं।
c) The above-mentioned evidence/information is to be furnished electronically in 'e-Proceedings' facility through your account in 'e-Filing' website of Income Tax Department (www.incometax.gov.in). Brief note

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For ETA STAR INFOPARK
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Note: The website address of the e-filing portal has been changed from www.incometaxindiaefiling.gov.in to www.incometax.gov.in.

AACFE6010C- ETA STAR INFOPARK
A.Y. 2020-21
ITBA/AST/F/142(1)/2022-23/1044461667(1)

on 'e-Proceedings'/'Faceless Assessment' are available on the e-Filing website (www.incometax.gov.in).

Yours faithfully,

Assessment Unit/Verification Unit/Technical Unit/Review Unit

Income Tax Department

NOTE: To know the originator Unit of this Communication, kindly see the Digital Signature.

INCOME TAX DEPARTMENT

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For ETA STAR INFOPARK

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AACFE6010C- ETA STAR INFOPARK
A.Y. 2020-21
ITBA/AST/F/142(1)/2022-23/1044461667(1)

अनुलग्नक **ANNEXURE**

1. आयकर अधिनियम, **1961** की धारा **142(1)** के तहत निम्नलिखित खाते या दस्तावेज या जानकारी मांगी गई है:
1. **The following accounts or documents or information is/are sought under section 142(1) of the Income-tax Act, 1961:**

In connection with ongoing scrutiny assessment proceedings in your case for A.Y. 2020-21, It is requested to provide the following details and explanations (in the manner sought therein) with full details and credible & independently verifiable supporting documentary evidence (wherever applicable): -

1. Provide a detailed note on the nature of business activity carried out by you clearly outlining the exact nature of activity involved in & highlighting the critical process involved. Also provide the different sources from which income has been earned by you during the year with the description of the expenses incurred during the year.
2. Provide copy of the ITR, Profit and loss account&balance sheet (with all annexures and notes to accounts), audit report along with computation of income for the FY 2019-20.
3. Please state as to whether assessment proceedings have been carried out in the case of the assessee for the last 9 assessment years preceding the current assessment year under consideration. If so, please provide following details: -

Sr. No.	Assessment Year	Section under which proceedings carried out	Date of assessment order	Total addition made	Issues in brief on which addition made	Result of 1st appeal with CIT(A)	Da of CI (A or

The above details are to be provided for each issue on which addition has been made in the preceding years. Also provide copies of the relevant assessment and appellate orders, if applicable.

4. Provide detailed reconciliation of receipts shown as per 26AS statement with the receipts shown as per books of accounts and ITR filedin the following format along with difference (if any) and reasons for same with supporting documentary evidence.

Sr. No.	Name of the entity from which amount	PAN	Address	Total TDS for the year (as	Total TDS claimed during the year	Total amount received as per 26AS	Total amount as per profit and loss

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	received			per 26AS)			account	

Also provide copies of ledger in respect of each of above entity and also corresponding sales/receipt ledger from the profit and loss account.

5. Provide reconciliation of all the expenses debited in the profit and loss account with the TDS deducted on same and paid to the government account before the due date of filing of return of income with evidence of such payment. In case of any default, please provide the detailed working of disallowance u/s 40(a)(ia) of the Act along with reasons for default. Also reconcile the same with computation of income to show that same has been considered while computing the total income.

6. Provide party-wise details of all the expenses (aggregate more than Rs. 5 lacs) made by you during the year in the following format: -

Sr. No	Name of the Entity	Address	PAN	Amount of total expenses	Amount paid during the year	Head under which categor in the accoun

Separate tabular details have to be provided for all the direct and indirect expenses. Also provide certified copies of ledger for each of the above entity along with documentary evidence including copies of bills, invoices, vouchers etc. Also justify that the expenses have been incurred wholly and exclusively for the purpose of business with supporting documentary evidence, wherever applicable.

7. Please provide detailed computation of the LTCG shown by the assessee during the year under consideration along with detailed note on the nature of transaction which has been claimed as transfer of long term capital asset.

8. Regarding the above LTCG claimed in the return of income, please provide the following details: -

(a) The details of purchase of the capital asset transferred with date of acquisition,

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cost of acquisition, copy of invoice/document for purchase along with copies of purchase agreement/deed and the sources of funds used for acquisition.

(b) The details of cost of any improvement incurred in the capital asset transferred with dates of such improvement, copies of documentary evidence for such cost with bills, agreements etc and evidence of payment of such costs.

(c) The details of the sale consideration received on the transfer of the capital asset with date of transfer, sale consideration received, expenses incurred on transfer with documentary evidence including sale invoice/bills and copies of sale deed

(d) Please state as to whether the value as per stamp valuation authorities has been adopted as sale consideration u/s 50C for the purpose of computation of Capital gain? If not, provide detailed justification for same with reasons and documentary evidence.

(e) Provide copy of the agreement by virtue of which it is claimed that capital asset has been transferred during the year under consideration with name, address, PAN of the transferee of such capital asset

9. It is seen from the perusal of available records and submission made so far that you have made investment into equity shares of two entities. With regard t0 these investments, provide the following details and explanation: -

(a) Name, address, PAN of the companies in which investment made.

(b) Nature of relationship/association of the two companies with the assessee.

(c) The rationale for making such investment into these companies

(d) The copies of communication exchanged between the assessee and investee entities for the purpose of making negotiation and such investment decision

(e) Copies of documents provided by those entities or obtained by the assessee for due diligence carried out by the assessee

(f) Copies of due diligence document prepared on verification of the information and documents obtained from those entities including the copies of valuation reports obtained from registered valuer

(g) The justification of the basis for valuation of equity shares of companies in which investment made vis-à-vis the financial position of the companies and any other relevant information obtained.

(h) Copies of ledger of the two entities in which investment has been made by the

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assessee during the year.

(i) The details of sources of funds used for making the investments into equity shares with copies of bank book and bank account statements and relevant bank entries highlighted in the statement.

(j) The justification for making investment into East Coast Construction and Industries Limited at value much more than actual value of the shares of the company as on the date of making investment, as the entire investment has been provisioned for diminution in value just within few days of making the investment.

(k) The justification of making investments at Rs. 10 per share into Intersea Maritime Ltd. whereas you have submitted that even registered valuer has valued the share at Rs. 7.58 each share.

The above details have to be provided in the requisite format within time specified in the notice, failing which it shall be assumed that you have nothing to state in the matter and appropriate decision shall be taken as per law without any further reference made to you.

INCOME TAX DEPARTMENT

Assessment Unit/Verification Unit/Technical Unit/Review Unit
Income Tax Department

NOTE: To know the originator Unit of this Communication, kindly see the Digital Signature.

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For ETA STAR INFOPARK

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Digitally signed by
ASSESSMENT UNIT, INCOME
TAX DEPARTMENT
Date: 03-08-2022 18:30:29 IST

On going through the above notices issued during the course of the assessment proceedings, we noticed that the AO except asking to provide details of the LTCG claimed in the return of income i.e. sales consideration, purchase, cost of improvement, stamp valuation, copy of agreement etc had never enquired & examined the issues as rightly pointed out by the ld. PCIT. The contention of the ld. PCIT is that the aspect of the impugned transfer of land in question vide agreement of sale without possession dated 27.05.2019, to be treated as income from other sources or business activity carried on by the assessee as the same being an adventure in the nature of trade **had not been verified** during the assessment proceeding. Thus, in the opinion of ld. PCIT the primary issue involved is whether the sale of this undivided share of land arising out of JDA dated 28.03.2011 executed by the assessee firm is to be considered as sale proceeds under the head of capital gains or business income arising on entering adventure in the nature of trade which **had not been examined** by the AO. After analyzing the gist history of the impugned land, the ld. PCIT, Bengaluru-1 was of the opinion that treatment of land in question as capital asset and instead of stock in trade is not acceptable for the following reasons: -

- Intention of assessee firm while entering into JDA dated 28.03.2011 was to exploit commercial use of land.
- In agreement the developer has obligated to ensure that the project yields to the assessee firm at least the minimum average net revenue in respect of commercial exploitation of the land owner's share over the lifetime of the project.
- It is necessary to appreciate that assessee firm had entered in to non-compete clause with the developer i.e., RPPL at clause no. 10.1 of the said agreement thereby committing that assessee firm along with other land owners and co-developers

will not compete with developer during the term of agreement and completion of the sale of the entire development on the project land.

- It is also necessary to observe the treatment given to the impugned land by the assessee firm in its books of accounts. The assessee had not held the said lands for investment and instead the same were treated as stock in trade whose value kept on varying each year which is corroborated by the fact that in closing stock or stock in trade, the valuation is always as per the market price or the cost price whichever is lower.
- Further, after examination of agreement of sale, it is noticed that possession has not been transferred to the purchaser/developer. A contract for sale is merely an agreement to sell and there is no transfer of ownership. The sale only creates certain rights and interest for the parties over the property. Ownership refers to a bundle of right such as possession, title, interest, authority to dispose etc.
- In present facts of the case, the agreement of sale without possession is an agreement executed between parties, an owner of land and purchaser of land for sell of land without giving the possession to the buyer/purchaser. Land is remaining in possession of the seller.
- It is further noticed that it is not a case of transfer under section 2(47) of the Act as title to immovable assets will not pass till the conveyance deed is executed or registered.

Thus, on perusal of the assessment order as well as the notices issued during the course of the assessment proceedings, we are of the considered opinion that the AO had not even whispered a single word relating to the above issues during the entire assessment proceedings & therefore the ld. PCIT had rightly held the order of the AO to be erroneous and prejudicial to the interest of the

revenue as the AO had completed the assessment without making necessary inquiries or verifying the issues.

10.13 Before us, the ld. AR of the assessee by referring to the additional grounds & evidences produced before us, vehemently submitted that the ld. PCIT grossly erred in revising the order of the AO based on the audit objections raised the Revenue Audit party. However, on perusal of the letter of the CPIO dated 12/03/2026, we observed that the CPIO had categorically stated that the said audit objections was under consideration during the on-going assessment proceedings & the disclosure of the same at that stage would impede the process of assessment/investigation. Thus, in our opinion, it is not established the fact that the revision Order solely based on some observations of the Audit parties. In our opinion, as observed from the revision order passed by the ld. PCIT, it rests upon the assessment record, the JDA and the agreement as referred by the ld. PCIT in his order. What the law requires is the independent satisfaction upon examination of the record which is apparent on the face of the revision order & therefore we are not inclined to accept that the audit objection form the basis of impugned revision order 24/03/2025.

10.14 Now coming to another contention of the ld. AR of the assessee that the ld. PCIT failed to adhere to the principles of natural justice by not providing the assessee a reasonable opportunity of being heard. In our considered opinion, the ld. PCIT vide show- cause notice dated **23/01/2025** had categorically stated the issues which were not verified & examined by the AO & also stated that the assessment order deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue in view of clause (a) to explanation 2 of section 263 of the Act and accordingly requested the assessee to furnish the written explanations/submission.

Further, we also observed that the ld. PCIT had also issued notices of hearing on **17/01/2025** as well as on **28/01/2025** to furnish the written explanation/submission. We also take note of the fact that the assessee had also submitted a detailed objections/reply on **12/02/2025**. The ld. PCIT after considering the reply of the assessee firm had passed a revision order u/s 263 of the Act. Thus, we are not inclined to accept the contention of the ld. AR of the assessee that the ld. PCIT failed to adhere to the principles of natural justice by not providing the assessee a reasonable opportunity of being heard.

10.15 Further, we are also of the considered opinion that the Assessing Officer is not expected to put blinkers on his eyes and mechanically accept what the assessee claims before him. It is his duty to ascertain the truth of the facts stated and the genuineness of the claims made in the return when the circumstances of the case are such as to provoke inquiry. The assessment order sought to be revised under Section 263 of the Act would be erroneous and fall in the aforesaid category of "errors" if it is, inter alia, based on an incorrect assumption of facts or an incorrect application of law or non-application of mind to something which was obvious and required application of mind or based on no or insufficient materials so as to affect the merits of the case and thereby cause prejudice to the interest of the revenue. The Commissioner may consider an order of the Assessing Officer to be erroneous not only when it contains some apparent error of reasoning or of law or of fact on the face of it but also when it is a stereo-typed order which simply accepts what the assessee has stated in his return and fails to make enquiries or examine the genuineness of the claim which are called for in the circumstances of the case. In taking the aforesaid view, we are supported by the decisions of the Hon'ble

Supreme Court in Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84, Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC).

10.16 Section 263 of the Income-tax Act seeks to remove the prejudice caused to the revenue by the erroneous order passed by the Assessing Officer. It empowers the Commissioner to initiate suo moto proceedings either where the Assessing Officer takes a wrong decision without considering the materials available on record or he takes a decision without making an enquiry into the matters, where such inquiry was prima facie warranted. The Commissioner will be well within his powers to regard an order as erroneous on the ground that in the circumstances of the case, the Assessing Officer should have made further inquiries before accepting the claim made by the assessee in his return. The reason is obvious. Unlike the Civil Court which is neutral in giving a decision on the basis of evidence produced before it, the role of an Assessing Officer under the Income-tax Act is not only that of an adjudicator but also of an investigator. He cannot remain passive in the face of a claim, which is apparently in order but calls for further enquiry. He must discharge both the roles effectively.

10.17 We are also of the considered opinion that as rightly contended by the ld. CIT DR, there is no express view/opinion of the Assessing Officer, surely it also cannot be said that the same is a plausible view. Thus, under the facts & circumstances discussed above, it is a reasonably fit case for exercising revisionary jurisdiction under section 263 of the Act. After all, the Principal Commissioner of Income-tax gave another chance to the assessee to furnish the necessary supportive evidence of its claim and explain why the proposed addition should not be made to income.

11. Before parting, we make it clear that we have not made any comments on the merits of the case and the assessee is at liberty to explain the case during the assessment/appellate proceedings.

12. In the result the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 6th Oct, 2026

Sd/-	**Sd/-**
(Waseem Ahmed)	**(Keshav Dubey)**
Accountant Member	**Judicial Member**

Bangalore,
Dated 6th Oct, 2026.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.